

PAUL WARD
April 20, 2022

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

STATE OF NORTH)	
DAKOTA,)	Civil No.
)	1:19-cv-00150-DMT-
Plaintiff,)	ARS
)	
vs.)	DEPOSITION OF:
)	
THE UNITED STATES)	PAUL WARD
OF AMERICA,)	
)	
Defendant.)	

THE VIDEOCONFERENCE DEPOSITION OF PAUL WARD,
taken before Tracy E. Barksdale, Registered
Professional Reporter, commencing at 8:27
a.m. MDT, April 20, 2022.

Reporter: Tracy E. Barksdale, RPR, CSR

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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 FOR THE PLAINTIFF: Paul B. Kerlin (Via Zoom) GREENBERG TRAURIG, LLP 2 1000 Louisiana Street, 3 Suite 1700 4 Houston, Texas 77002 713.374.3500 Kerlinp@gtlaw.com</p> <p>5 FOR THE PLAINTIFF: Paul M. Seby, Special (Via Zoom) Assistant Attorney 6 General 7 GREENBERG TRAURIG, LLP 8 1144 15th Street, Suite 3300 9 Denver, Colorado 80202 303.572.6584 Sebyp@gtlaw.com</p> <p>10 FOR THE DEFENDANT: V. William Scarpato, (Via Zoom) Special Assistant to the 11 United States Attorney 12 General 13 UNITED STATES ATTORNEY'S 14 OFFICE - DISTRICT OF COLORADO 15 1801 California Street, Suite 1600 16 Denver, Colorado 80202 303.454.0100 Victor.scarpato@usdoj.gov</p> <p>17 ALSO PRESENT: Shawn Capron, videographer (Via Zoom) Jose Diaz</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1 THE VIDEOGRAPHER: We are now on 2 the record at 1427 UTC on April 20th, 2022. 3 Audio and video recording will continue until 4 all parties agree to go off record. 5 Please note that the microphones 6 are sensitive and may pick up whispering and 7 private conversation. Private conversation 8 and/or attorney-client interaction should be 9 held outside the presence of this remote 10 interface. 11 For the purpose of today, the 12 witness-only video recording, the witness is 13 being spotlighted on all screens on speaker 14 view. We ask that the witness not remove 15 this setting during this deposition, as it 16 may cause other participants to appear on the 17 final video. 18 For anyone who does not want the 19 witness video to take up a large part of your 20 screen, you may click the gallery view button 21 in the upper right corner of this remote depo 22 interface. 23 This is the video-recorded 24 proceeding of Paul Ward, taken by counsel for 25</p>																																																																								
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X O F E X A M I N A T I O N</p> <p>1 PAUL WARD 2 April 20, 2022</p> <table border="0"> <tr> <td>3 Examination by</td> <td>Page</td> </tr> <tr> <td>4 Mr. Kerlin</td> <td>6, 83 (cont.)</td> </tr> <tr> <td>5 Mr. Scarpato</td> <td>146</td> </tr> </table> <p style="text-align: center;">I N D E X O F E X H I B I T S</p> <table border="0"> <tr> <td>6 Exhibits</td> <td>Marked on page</td> </tr> <tr> <td>7 311 (Email update on Dakota</td> <td></td> </tr> <tr> <td>8 Access Pipeline and protest</td> <td></td> </tr> <tr> <td>9 matter)</td> <td>48</td> </tr> <tr> <td>10 312 (Email chain LE meeting</td> <td></td> </tr> <tr> <td>11 with tribal leaders)</td> <td>52</td> </tr> <tr> <td>12 318 (Email chain update on</td> <td></td> </tr> <tr> <td>13 protest camps)</td> <td>75</td> </tr> <tr> <td>14 319 (Email chain shooting)</td> <td>84</td> </tr> <tr> <td>15 320 (Email missing buffalo)</td> <td>91</td> </tr> <tr> <td>16 321 (Emails North Dakota TFR)</td> <td>95</td> </tr> <tr> <td>17 322 (Emails North Dakota TFR)</td> <td>101</td> </tr> <tr> <td>18 323 (Emails North Dakota TFR)</td> <td>102</td> </tr> <tr> <td>19 324 (Email investigative and</td> <td></td> </tr> <tr> <td>20 prosecution coordination</td> <td></td> </tr> <tr> <td>21 meeting)</td> <td>105</td> </tr> <tr> <td>22 325 (Emails police chiefs all</td> <td></td> </tr> <tr> <td>23 call)</td> <td>106</td> </tr> <tr> <td>24 326 (Emails prayer ceremony)</td> <td>111</td> </tr> <tr> <td>25 327 (Email re DAPL Corps - day</td> <td></td> </tr> <tr> <td>of action)</td> <td>113</td> </tr> <tr> <td>328 (Emails DAPL Corps - day</td> <td></td> </tr> <tr> <td>of action)</td> <td>115</td> </tr> <tr> <td>331 (Emails DAPL Corps - day</td> <td></td> </tr> <tr> <td>of action)</td> <td>116</td> </tr> <tr> <td>332 (Emails significant</td> <td></td> </tr> <tr> <td>incident notification)</td> <td>118</td> </tr> <tr> <td>343 (Email - Startzell with</td> <td></td> </tr> <tr> <td>letter from chief LE</td> <td></td> </tr> <tr> <td>officers)</td> <td>134</td> </tr> <tr> <td>Exhibits</td> <td>Referenced on page</td> </tr> <tr> <td>26 (Retained.)</td> <td>70</td> </tr> <tr> <td>206</td> <td>62</td> </tr> </table>	3 Examination by	Page	4 Mr. Kerlin	6, 83 (cont.)	5 Mr. Scarpato	146	6 Exhibits	Marked on page	7 311 (Email update on Dakota		8 Access Pipeline and protest		9 matter)	48	10 312 (Email chain LE meeting		11 with tribal leaders)	52	12 318 (Email chain update on		13 protest camps)	75	14 319 (Email chain shooting)	84	15 320 (Email missing buffalo)	91	16 321 (Emails North Dakota TFR)	95	17 322 (Emails North Dakota TFR)	101	18 323 (Emails North Dakota TFR)	102	19 324 (Email investigative and		20 prosecution coordination		21 meeting)	105	22 325 (Emails police chiefs all		23 call)	106	24 326 (Emails prayer ceremony)	111	25 327 (Email re DAPL Corps - day		of action)	113	328 (Emails DAPL Corps - day		of action)	115	331 (Emails DAPL Corps - day		of action)	116	332 (Emails significant		incident notification)	118	343 (Email - Startzell with		letter from chief LE		officers)	134	Exhibits	Referenced on page	26 (Retained.)	70	206	62	<p style="text-align: right;">Page 5</p> <p>1 the plaintiff in the matter of State of North 2 Dakota versus the United States of America. 3 This matter is filed in the United States 4 District Court of North Dakota, Western 5 Division. This proceeding is being held 6 remotely. 7 My name is Shawn Capron. I'm the 8 videographer on behalf of US Legal Support, 9 located at 16825 North Chase Drive, Houston, 10 Texas. I'm not related to any party in this 11 action, nor am I financially interested in 12 the outcome. 13 The court reporter today is Tracy 14 Barksdale on behalf of US Legal Support. 15 Counsel will state their appearance 16 for the record, after which the court 17 reporter will enter a statement for this 18 remote proceeding into this record and swear 19 in the witness. 20 MR. KERLIN: Paul Kern on behalf of 21 the plaintiff, the State of North Dakota. 22 MR. SCARPATO: Bill Scarpato on 23 behalf of defendant United States of America. 24 MR. KERLIN: Also attending is Paul 25 Seby, who also represents the plaintiff,</p>
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Objection to all
testimony as hearsay,
802

<p style="text-align: right;">Page 6</p> <p>1 State of North Dakota.</p> <p>2 MR. SEBY: Yes. Sorry. I was on</p> <p>3 mute. This is Paul Seby. I'm not taking the</p> <p>4 deposition, Mr. Kerlin is, but I'll be noting</p> <p>5 myself as present.</p> <p>6 PAUL WARD,</p> <p>7 having been first duly sworn,</p> <p>8 was examined and testified as follows:</p> <p>9 MR. KERLIN: Good morning. This</p> <p>10 will be the deposition of Paul Ward, taken</p> <p>11 pursuant to the notice that was served on</p> <p>12 defendants USA and agreement of counsel.</p> <p>13 EXAMINATION</p> <p>14 BY MR. KERLIN:</p> <p>15 Q. Mr. Ward, my name is Paul Kerlin. I'm</p> <p>16 both an attorney with the law firm, Greenberg</p> <p>17 Traurig, and, along with my law partner, Paul</p> <p>18 Seby, who is a special assistant attorney</p> <p>19 general for North Dakota, we represent the</p> <p>20 State of North Dakota. Throughout the</p> <p>21 deposition today, I'll refer to my client as</p> <p>22 North Dakota. Okay?</p> <p>23 A. Fine. Is there any way that I can see</p> <p>24 you as opposed to Bill on the screen when</p> <p>25 you're speaking to me?</p>	<p style="text-align: right;">Page 8</p> <p>1 sworn in this morning to tell the truth?</p> <p>2 A. Yes.</p> <p>3 Q. And could you state your name for the</p> <p>4 record.</p> <p>5 A. Paul Ward.</p> <p>6 Q. Do you go by any other names?</p> <p>7 A. No.</p> <p>8 Q. Have you been deposed or provided</p> <p>9 in-court testimony before?</p> <p>10 A. Yes.</p> <p>11 Q. So I'm sure you're familiar with the</p> <p>12 process, but, just to go over it briefly,</p> <p>13 everything that we say is being written down</p> <p>14 and videotaped. We also are doing this by</p> <p>15 Zoom, and I know we've already had a couple</p> <p>16 little technical issues that I think we've</p> <p>17 gotten resolved, but if I ask you for a</p> <p>18 verbal response, it's only so that the court</p> <p>19 reporter will have a verbal yes or no.</p> <p>20 Sometimes we can, you know, nod our heads or</p> <p>21 shake our heads, and the same thing with</p> <p>22 uh-huhs or things of that nature; is that</p> <p>23 acceptable?</p> <p>24 A. Yes.</p> <p>25 Q. Also, sometimes witnesses can anticipate</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. KERLIN: Sure. Is there anyone</p> <p>2 that can help us with that? Perhaps Shawn</p> <p>3 could.</p> <p>4 THE VIDEOGRAPHER: Yeah. Sounds</p> <p>5 like they're on a video conference system, so</p> <p>6 there should be another function to the video</p> <p>7 conference to that.</p> <p>8 MR. SEBY: Paul, if you'd like to</p> <p>9 give Mike a shout, he should be able to do</p> <p>10 that.</p> <p>11 THE VIDEOGRAPHER: Is it okay if we</p> <p>12 go off the record?</p> <p>13 MR. SEBY: Sure.</p> <p>14 THE VIDEOGRAPHER: We're going off</p> <p>15 the record. Universal coordinated time is</p> <p>16 1421. We're off the record.</p> <p>17 (Discussion held off record)</p> <p>18 THE VIDEOGRAPHER: We're now back</p> <p>19 on the record. Universal coordinated time is</p> <p>20 1439.</p> <p>21 BY MR. KERLIN:</p> <p>22 Q. Mr. Ward, we're back after a short</p> <p>23 technical break. Are you able to continue?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. You understand that you have been</p>	<p style="text-align: right;">Page 9</p> <p>1 the end of a question or where the question</p> <p>2 is going and start providing an answer before</p> <p>3 the question is completed. I would ask that</p> <p>4 you wait until I finish asking my question</p> <p>5 before you start your answer; again, so the</p> <p>6 court reporter will be able to have a clean</p> <p>7 record. Okay?</p> <p>8 A. Yes.</p> <p>9 Q. I'll do the best not to interrupt you</p> <p>10 when you're providing answers. If I do,</p> <p>11 I'll, of course, give you an opportunity to</p> <p>12 finish your answer so that I don't interrupt.</p> <p>13 But, again, sometimes when we are doing this</p> <p>14 by remote means, it can be -- there can be</p> <p>15 some interruptions or inadvertent speaking</p> <p>16 over each other. I'll try to minimize that</p> <p>17 as much as I can.</p> <p>18 If you need a break, let me know.</p> <p>19 I'd ask, if there's a question pending, that</p> <p>20 you please answer the pending question, and</p> <p>21 then we're happy to take a break as needed</p> <p>22 throughout the course of the deposition. I</p> <p>23 would suggest a break about every hour or so</p> <p>24 for everyone to have a chance to stretch</p> <p>25 their legs, get something to drink, or that</p>

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<p style="text-align: right;">Page 10</p> <p>1 sort of thing; all right?</p> <p>2 A. Fine.</p> <p>3 Q. If you don't understand a question, just</p> <p>4 let me know. I'll try to repeat it or</p> <p>5 rephrase it. If you don't ask me to rephrase</p> <p>6 it or clarify, then the assumption is that</p> <p>7 you understand the question I asked. Okay?</p> <p>8 A. Yes.</p> <p>9 Q. Is there anyone in the room with you?</p> <p>10 A. I'm sorry? What?</p> <p>11 Q. Is there anyone in the room with you</p> <p>12 today?</p> <p>13 A. No.</p> <p>14 Q. I would ask that you turn off any</p> <p>15 electronic devices or put them on silent mode</p> <p>16 so they won't be distracting or interrupt</p> <p>17 you. If there's something important that</p> <p>18 you're expecting such as a call or a message,</p> <p>19 that, of course, is okay. Just let us know.</p> <p>20 Again, I just wanted to minimize the</p> <p>21 distractions, if possible. Okay?</p> <p>22 A. Okay.</p> <p>23 Q. And if you're relying on some document</p> <p>24 during the course of your deposition, I would</p> <p>25 ask that you identify that document. Any</p>	<p style="text-align: right;">Page 12</p> <p>1 or that would interfere with your ability to</p> <p>2 recall events other than the passage of time?</p> <p>3 A. No.</p> <p>4 Q. I think you mentioned earlier that</p> <p>5 you've testified under oath before; is that</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Can you tell me about when you have</p> <p>9 testified under oath.</p> <p>10 A. I'd been in law enforcement for almost</p> <p>11 40 years at the time of my retirement. I</p> <p>12 testified numerous times in court</p> <p>13 proceedings.</p> <p>14 Q. Prior to that, can you recall the last</p> <p>15 time you provided testimony under oath?</p> <p>16 A. It wasn't while I was a marshal, so it</p> <p>17 would have been prior to 2010. Probably</p> <p>18 about 2008 or '9, I would imagine, at my last</p> <p>19 trial.</p> <p>20 Q. Before your deposition today, have you</p> <p>21 or I ever met or spoken?</p> <p>22 A. No.</p> <p>23 Q. Could you tell me what you did to</p> <p>24 prepare for your deposition today.</p> <p>25 A. I met with -- yesterday I met with</p>
<p style="text-align: right;">Page 11</p> <p>1 question about that -- do you have any</p> <p>2 documents with you today?</p> <p>3 A. No.</p> <p>4 Q. Any questions about these instructions?</p> <p>5 A. No.</p> <p>6 Q. Court reporter swore you in. You</p> <p>7 understand you're obligated to tell the truth</p> <p>8 today; right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you understand that your</p> <p>11 deposition today has the same force and</p> <p>12 effect as if you were in front of the judge</p> <p>13 and jury?</p> <p>14 A. Yes.</p> <p>15 Q. You understand that portions of your</p> <p>16 videotaped deposition may be played before</p> <p>17 the Court at the trial of this matter?</p> <p>18 A. Yes.</p> <p>19 Q. And I assume, you know, you'll do the</p> <p>20 best you can to provide accurate testimony to</p> <p>21 the extent you can?</p> <p>22 A. Yes.</p> <p>23 Q. Are you on any type of medications or</p> <p>24 any type of -- any doctors told you you have</p> <p>25 any issues with respect to remembering things</p>	<p style="text-align: right;">Page 13</p> <p>1 two -- doing the same video process with</p> <p>2 Bill, with the US Attorney, and for a short</p> <p>3 amount of time with Ian.</p> <p>4 Q. Don't get into the content of those</p> <p>5 discussions, but can you tell me</p> <p>6 approximately how long that lasted.</p> <p>7 A. The whole process lasted approximately</p> <p>8 two hours or so.</p> <p>9 Q. Did you talk with anyone other than</p> <p>10 those attorneys about your deposition today?</p> <p>11 A. Not other than mentioning to my wife</p> <p>12 what I'd be doing today.</p> <p>13 Q. Fair enough. Did you review any</p> <p>14 documents prior to this deposition?</p> <p>15 A. The only one that I looked at yesterday</p> <p>16 was in reference to an email that I</p> <p>17 apparently had sent.</p> <p>18 Q. Okay. Did you do any research about the</p> <p>19 issues in this case?</p> <p>20 A. No.</p> <p>21 Q. We've requested and obtained some</p> <p>22 documents, some of which are emails, press</p> <p>23 releases, things of that nature through the</p> <p>24 formal discovery process from USA that have</p> <p>25 also been collected by the State of North</p>

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1 Dakota. Outside of what was maintained by
2 the USA while you were an employee of USA,
3 did you keep any notes at home or on any
4 personal computers, devices, or things of
5 that nature?
6 MR. SCARPATO: Objection, vague.
7 THE WITNESS: No. No.
8 BY MR. KERLIN:
9 Q. Didn't take any notes at home or create
10 a timeline or anything like that?
11 A. Not that I recall, no.
12 Q. Okay. Are you aware of North Dakota's
13 case against the United States which was
14 filed under the federal tort claims act that
15 involves \$38,000,000 in damages North Dakota
16 seeks as a result of the US Army Corps and
17 other federal officials' actions and
18 inactions associated with protest against the
19 North Dakota Access Pipeline?
20 A. Only what I've seen on the local news
21 reports or in the paper. Other than that, I
22 know no detail.
23 Q. And it's that lawsuit for which we're
24 here today and that you're a fact witness
25 that we're taking your deposition for. So

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1 I'm curious, have you seen a copy of the
2 complaint that was filed by the State of
3 North Dakota in this case?
4 A. No.
5 Q. Have you seen the US District Court's
6 denial of a motion to dismiss the case that
7 was filed by the US?
8 A. No.
9 Q. Okay. And so you haven't seen the order
10 that the court issued denying that motion and
11 allowing the case to proceed?
12 A. No.
13 Q. Are you aware of the court's order that
14 compelled discovery against certain federal
15 agencies and officials in addition to corps
16 witnesses?
17 A. No.
18 Q. And then are you aware of the United
19 States District Court denied a motion for for
20 partial summary judgment that was entered by
21 the United States. Have you seen that order?
22 A. No.
23 Q. I want to talk to you a little bit about
24 your background and your education. Could
25 you tell me where you're originally from.

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1 A. I was born and raised in Massachusetts.
2 Q. Did you move from Massachusetts at some
3 point?
4 A. When I enlisted in the military, in the
5 Air Force, I moved away, ending up being
6 stationed in Minot, North Dakota.
7 Q. How long were you stationed in Minot?
8 A. I enlisted in 1976, I arrived in Minot
9 in 1977, and I was discharged from the
10 military in 1979.
11 Q. What rank did you attain in the
12 Air Force?
13 A. Airman First Class.
14 Q. And then what was your assignment in the
15 Air Force?
16 A. I was a member of the 91st Security
17 Police Squadron Tactical Neutralization Team,
18 which is equivalent of a civilian SWAT team.
19 Q. Were you honorably discharged?
20 A. Yes.
21 Q. After you were honorably discharged,
22 what did you do next?
23 A. I joined the Minot Police Department as
24 a police officer.
25 Q. How long were you a police officer with

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1 the Minot Police Department?
2 A. Two years. Approximately two years.
3 Q. And what did you -- what was your next
4 employment?
5 A. I switched to the Ward County Sheriff's
6 Department mainly because I could work nights
7 and go to college during the day.
8 Q. Is that something that you did? Did you
9 attend college?
10 A. I did.
11 Q. And what college did you attend?
12 A. Minot State University.
13 Q. Did you receive any type of a degree?
14 A. Bachelor's degree.
15 Q. What was your focus of study?
16 A. Criminal justice.
17 Q. When did you receive that?
18 A. 1983.
19 Q. And then after -- did you continue to
20 work at the -- in the sheriff's department
21 for Ward County?
22 A. I did.
23 Q. And when did you leave the sheriff's
24 department?
25 A. You're trying my memory, but somewhere

14:12-22
401-402

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<p style="text-align: right;">Page 18</p> <p>1 around 1985.</p> <p>2 Q. What did you do next?</p> <p>3 A. I moved to the state of New Hampshire</p> <p>4 and worked for the Nashua City Police</p> <p>5 Department.</p> <p>6 Q. How long were you with the city police</p> <p>7 department?</p> <p>8 A. Two years.</p> <p>9 Q. What did you do next?</p> <p>10 A. I was hired by the State of</p> <p>11 North Dakota, the division of criminal</p> <p>12 investigation, under the direction of the</p> <p>13 attorney general.</p> <p>14 Q. And how long did you work for the State</p> <p>15 of North Dakota in the criminal</p> <p>16 investigations division?</p> <p>17 A. Until 1989, when I was -- went to the</p> <p>18 federal level, worked for the office of</p> <p>19 inspector general for USDA, and I did that</p> <p>20 until 2010, when I was appointed by President</p> <p>21 Obama as a US Marshal.</p> <p>22 Q. How long did you serve as the US Marshal</p> <p>23 for North Dakota?</p> <p>24 A. 2010 until December, end of December of</p> <p>25 2016, at the end of President Obama's term.</p>	<p style="text-align: right;">Page 20</p> <p>1 involving program fraud with USDA programs.</p> <p>2 Q. Before I forget to ask, do you have any</p> <p>3 certificates or licenses?</p> <p>4 A. I'm not sure if I understand what you</p> <p>5 mean. Such as what?</p> <p>6 Q. Sure. Well, I mean, I'm just wondering</p> <p>7 if you have any particular certifications</p> <p>8 that would be applicable, and I'm not sure</p> <p>9 what those might be in law enforcement, or</p> <p>10 are you a member of any professional</p> <p>11 organizations, or were you when you were in</p> <p>12 law enforcement?</p> <p>13 A. I was a member of the North Dakota Peace</p> <p>14 Officers Association. Other than that, no.</p> <p>15 Q. I forgot to ask this earlier. Where are</p> <p>16 you located today for this deposition?</p> <p>17 A. I'm at the United States Attorney's</p> <p>18 office in Bismarck, North Dakota.</p> <p>19 Q. And where do you currently live?</p> <p>20 A. Bismarck, North Dakota.</p> <p>21 Q. Did you ever receive any type of</p> <p>22 demerits or disciplinary action during your</p> <p>23 course either in service in the Air Force or</p> <p>24 in any of your law enforcement roles?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Have you -- have you returned to work in</p> <p>2 any form after your retirement December of</p> <p>3 2016?</p> <p>4 A. Work at the golf course fixing the</p> <p>5 greens. And I substitute taught in the</p> <p>6 school system occasionally for two years</p> <p>7 right after I retired.</p> <p>8 Q. So from 1976 through 2016, is it</p> <p>9 accurate to say that you served continuously</p> <p>10 in law enforcement?</p> <p>11 A. Yes.</p> <p>12 Q. I want to talk to you a little bit about</p> <p>13 the work that you did for the State of</p> <p>14 North Dakota in the criminal investigations</p> <p>15 division. Can you tell me a little bit about</p> <p>16 the types of work that you were involved</p> <p>17 with.</p> <p>18 A. Felonious investigations, criminal</p> <p>19 investigations, ranging from thefts to</p> <p>20 homicide.</p> <p>21 Q. And then when you started working for</p> <p>22 the federal office of inspector general, what</p> <p>23 types of things were you working on primarily</p> <p>24 there?</p> <p>25 A. Mainly major white collar crimes</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. I want to talk to you a little bit more</p> <p>2 about the time that you served as a United</p> <p>3 States Marshal in North Dakota. In order to</p> <p>4 become a marshal, a US Marshal for the State</p> <p>5 of North Dakota, was there a confirmation</p> <p>6 process?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Can you tell me a little bit</p> <p>9 about how that worked.</p> <p>10 A. It started with a selection by the</p> <p>11 congressional staff and then a confirmation</p> <p>12 process leading up, you know, through the</p> <p>13 senate, being confirmed by the senate, and</p> <p>14 then on to appointment by the president.</p> <p>15 Q. Is there a marshal that's assigned or</p> <p>16 appointed and then confirmed for each state?</p> <p>17 A. Each judicial district in the country.</p> <p>18 There's 94. So North Dakota is one district,</p> <p>19 so there's one marshal.</p> <p>20 Q. Do you have an idea of how many were</p> <p>21 potentially considered for US Marshal of</p> <p>22 North Dakota at the time that you were</p> <p>23 selected?</p> <p>24 A. No, I don't.</p> <p>25 Q. Is it accurate to say that it's a pretty</p>

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<p style="text-align: right;">Page 22</p> <p>1 select group of law enforcement professionals</p> <p>2 that are, I would think, had exhibited</p> <p>3 exemplary service and excellent</p> <p>4 qualifications?</p> <p>5 MR. SCARPATO: Objection, vague.</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. I'll ask it this way. How do you think</p> <p>8 you got selected by President Obama to be the</p> <p>9 United States Marshal -- or put up for</p> <p>10 confirmation for United States Marshal for</p> <p>11 North Dakota?</p> <p>12 A. I wasn't selected by President Obama the</p> <p>13 way you termed it. I was appointed by</p> <p>14 President Obama. I was selected by Senators</p> <p>15 Dorgan, Conrad, and Pomeroy.</p> <p>16 Recommendations, I'm sure they did background</p> <p>17 checks, checked around, and found out once I</p> <p>18 was interested, that I would be the best</p> <p>19 choice. That's an assumption on my part, but</p> <p>20 I don't know what else to tell you.</p> <p>21 Q. And then when you went through the</p> <p>22 confirmation process, did you have to appear</p> <p>23 in front of a senate committee?</p> <p>24 A. No.</p> <p>25 Q. Can you tell me how that process worked.</p>	<p style="text-align: right;">Page 24</p> <p>1 law enforcement agencies such as the FBI,</p> <p>2 department of justice?</p> <p>3 A. Yes.</p> <p>4 Q. Can you give us an idea of how many</p> <p>5 people or individuals that you supervised or</p> <p>6 were under your direction as US Marshal.</p> <p>7 A. I think at the time I had 19 deputies,</p> <p>8 maybe six or seven administrative staff</p> <p>9 people, court security staff, which privately</p> <p>10 contracted but generally under our</p> <p>11 supervision of, I don't know how many guys</p> <p>12 they had, 20 or so, maybe more.</p> <p>13 Q. And then your jurisdiction as US</p> <p>14 Marshal, it would extend for that entire</p> <p>15 judicial district which is the entire state</p> <p>16 of North Dakota; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Was there anyone in particular during</p> <p>19 the course, when you were US Marshal, that</p> <p>20 you reported to?</p> <p>21 A. Director of the marshal service would be</p> <p>22 the only one that the marshals would report</p> <p>23 to.</p> <p>24 Q. So if you had an issue that arose, for</p> <p>25 instance, if you thought you needed more</p>
<p style="text-align: right;">Page 23</p> <p>1 A. I don't know. I'm not very political.</p> <p>2 Q. Well, I guess what I'm wondering is, you</p> <p>3 did have to go through a confirmation</p> <p>4 process; correct?</p> <p>5 A. They were provided the information, the</p> <p>6 application process, the background check by</p> <p>7 the FBI, and I guess they voted. I wasn't</p> <p>8 there. I don't know.</p> <p>9 Q. Ultimately you were one of those 97 that</p> <p>10 was selected to be the marshal for a judicial</p> <p>11 district; right?</p> <p>12 A. 94.</p> <p>13 Q. 94. Thank you for that clarification.</p> <p>14 A. 94, not 97.</p> <p>15 Q. Tell me what you were responsible for as</p> <p>16 the United States Marshal for North Dakota.</p> <p>17 A. Supervision of judicial district</p> <p>18 personnel, the deputies, the administration,</p> <p>19 the court security staff, safety of the</p> <p>20 judges, security of the judges in the</p> <p>21 courtroom and the court family. I had</p> <p>22 supervision of everything the deputies did.</p> <p>23 There would serve warrants, civil process.</p> <p>24 Q. In your role as US Marshal, did you have</p> <p>25 the ability to interface with other federal</p>	<p style="text-align: right;">Page 25</p> <p>1 resources, who would you reach out to?</p> <p>2 A. It would be the deputy director.</p> <p>3 Q. And during the time period of 2010 to</p> <p>4 2016, do you recall who that person was?</p> <p>5 A. No, I don't. I can't recall his name.</p> <p>6 Q. If it comes to you, just let me know.</p> <p>7 Did you ever make that request?</p> <p>8 Did you ever ask for resources?</p> <p>9 A. Yes.</p> <p>10 Q. And I'll come back to that a</p> <p>11 later in your deposition.</p> <p>12 In addition to the deputy director</p> <p>13 of the US Marshal Service, is there anyone</p> <p>14 else to whom you might direct a request for</p> <p>15 additional resources if something arose in</p> <p>16 your jurisdiction, your law enforcement</p> <p>17 jurisdiction?</p> <p>18 A. There were times when the deputy</p> <p>19 director, if I had a question in regards to</p> <p>20 additional personnel and that type of thing,</p> <p>21 he might direct me to somebody that answered</p> <p>22 to him that specialized in that particular</p> <p>23 subject. But I wouldn't go directly to that</p> <p>24 person without first contacting the deputy</p> <p>25 director.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. Did you ever serve as a liaison when you</p> <p>2 were US Marshal with respect to any other</p> <p>3 federal agencies? Was that ever part of what</p> <p>4 you did?</p> <p>5 A. No. If I understand your question</p> <p>6 correctly.</p> <p>7 Q. Did you ever, as US Marshal, did you</p> <p>8 ever have reason to interact with any of the</p> <p>9 tribes in North Dakota?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me the types of interaction</p> <p>12 you would have with tribes, and right now I'm</p> <p>13 not talking about the protests.</p> <p>14 A. I'm sorry. You're not talking about</p> <p>15 what?</p> <p>16 Q. The protests. Anything, if you can give</p> <p>17 me an idea of other interactions you might</p> <p>18 have with the tribe as US Marshal.</p> <p>19 A. Generally meetings, come to an</p> <p>20 understanding as to what we would do on the</p> <p>21 tribal land, in the reservations, when we had</p> <p>22 federal warrants to serve, what our role</p> <p>23 would be on the reservation and how we would</p> <p>24 interact.</p> <p>25 Q. So are you familiar with -- I'm going to</p>	<p style="text-align: right;">Page 28</p> <p>1 it on the news or if I spoke with the sheriff</p> <p>2 in Morton County. Not sure.</p> <p>3 Q. At some point did you learn that the</p> <p>4 protestors were located on US Army Corps of</p> <p>5 Engineer land?</p> <p>6 A. Yes.</p> <p>7 MR. SCARPATO: Object, vague.</p> <p>8 BY MR. KERLIN:</p> <p>9 Q. Do you recall about when that was?</p> <p>10 A. No, I don't. It would have been the</p> <p>11 same time period as the rest of it, though.</p> <p>12 Q. Okay. And I have some documents that</p> <p>13 may be helpful with respect to the particular</p> <p>14 dates, but I wanted to kind of get your</p> <p>15 understanding before we went over those.</p> <p>16 Okay?</p> <p>17 Did you at some point learn that</p> <p>18 the protestors were camping overnight on</p> <p>19 corps land?</p> <p>20 A. Yes.</p> <p>21 Q. To your knowledge, were these protestors</p> <p>22 sleeping in designated campgrounds or areas</p> <p>23 that were designated as campgrounds by the</p> <p>24 corps?</p> <p>25 A. I believe they were not, but I'm not</p>
<p style="text-align: right;">Page 27</p> <p>1 refer to as the Dakota Access Pipeline or</p> <p>2 DAPL. If I use the term DAPL, do you</p> <p>3 understand --</p> <p>4 A. Have I heard the term? I have heard the</p> <p>5 term, yes.</p> <p>6 Q. And when I say DAPL, I'm referring to</p> <p>7 the pipeline, Dakota Access Pipeline, the one</p> <p>8 that was there in North Dakota. Okay?</p> <p>9 A. Yes.</p> <p>10 Q. During the time period that you were a</p> <p>11 US Marshal, did you hear about protests</p> <p>12 regarding the Dakota Access Pipeline or DAPL?</p> <p>13 A. Yes.</p> <p>14 Q. When did you first hear about the</p> <p>15 protests?</p> <p>16 A. Summer of 2016, and that's when the</p> <p>17 protests were starting.</p> <p>18 Q. What did you hear about it when it first</p> <p>19 started?</p> <p>20 A. I don't know the specific date.</p> <p>21 Q. And what did you hear about the</p> <p>22 protests? In other words, how did you come</p> <p>23 to find out that there were, in fact,</p> <p>24 protests?</p> <p>25 A. I don't know. I don't know if I heard</p>	<p style="text-align: right;">Page 29</p> <p>1 sure about that.</p> <p>2 Q. And sounds like, with the protests, did</p> <p>3 you have -- well, let me ask this. How did</p> <p>4 you get involved in the response to the</p> <p>5 protests?</p> <p>6 MR. SCARPATO: Objection, assumes</p> <p>7 facts not in evidence.</p> <p>8 MR. KERLIN: Okay.</p> <p>9 BY MR. KERLIN:</p> <p>10 Q. Mr. Ward, at some point, did you get</p> <p>11 involved in the law enforcement response to</p> <p>12 the protests?</p> <p>13 A. Yes and no. I did not get involved in</p> <p>14 responding to the scene. I got involved in</p> <p>15 management meetings at the command center.</p> <p>16 Q. Thank you for that clarification.</p> <p>17 Can you recall about when you first</p> <p>18 started attending the meetings at the command</p> <p>19 center.</p> <p>20 A. I don't recall the exact date, but it</p> <p>21 was at the onset of command center itself.</p> <p>22 Q. And where was that command center</p> <p>23 located?</p> <p>24 A. The Morton County Sheriff's Department</p> <p>25 building.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. And is Sheriff Kirchmeier, is he the</p> <p>2 sheriff for Morton County?</p> <p>3 A. Yes.</p> <p>4 Q. I'm just trying to understand how you</p> <p>5 came to be a part of that. Were you invited</p> <p>6 to be a part of that, or did you ask to be a</p> <p>7 part of being able to attend the command</p> <p>8 center and hear what was going on with</p> <p>9 respect to the response?</p> <p>10 A. I don't recall the particular</p> <p>11 conversation, but Sheriff Kirchmeier and I</p> <p>12 spoke quite often, and I'm sure at that point</p> <p>13 it was brought up, and I attended some of the</p> <p>14 meetings.</p> <p>15 Q. From the onset of when you first</p> <p>16 attended the command center, were you</p> <p>17 provided access to that command center if you</p> <p>18 wanted to attend through the end of your</p> <p>19 duration as a US Marshal?</p> <p>20 A. Yes, but I did not attend the majority</p> <p>21 of the command center leadership meetings.</p> <p>22 Q. Okay.</p> <p>23 A. I did, to begin with, but not throughout</p> <p>24 the whole process.</p> <p>25 Q. Did your attendance change at some</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Were you given a reason for the denial</p> <p>2 of assistance by -- well, before I get there,</p> <p>3 let me ask. To whom did you make that</p> <p>4 request or requests? It sounded like you</p> <p>5 made more than one request; is that accurate?</p> <p>6 A. Yes.</p> <p>7 Q. And did you make that request to the</p> <p>8 deputy director?</p> <p>9 A. Yes.</p> <p>10 Q. Anyone else you made that request to?</p> <p>11 A. I had discussions with the office of</p> <p>12 general counsel, at the direction of the</p> <p>13 deputy director, that contacted me, and we</p> <p>14 discussed it, and I was denied again.</p> <p>15 Q. Were you given a reason?</p> <p>16 MR. SCARPATO: I'd just object for</p> <p>17 attorney-client privilege.</p> <p>18 Mr. Ward, to the extent your</p> <p>19 response would require discussion of</p> <p>20 communications with marshal service OGC,</p> <p>21 instruct you not to answer. But if you can</p> <p>22 answer without reference to those</p> <p>23 discussions, you can go ahead.</p> <p>24 THE WITNESS: The question remains</p> <p>25 is was I given a reason why?</p>
<p style="text-align: right;">Page 31</p> <p>1 point?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall about when that would have</p> <p>4 been?</p> <p>5 A. I guess the best term I could say is</p> <p>6 about halfway through until I retired. So</p> <p>7 maybe November, October, late October, early</p> <p>8 November.</p> <p>9 Q. And was there a reason why your</p> <p>10 attendance changed?</p> <p>11 A. The request that was made by the</p> <p>12 sheriffs at my early onset of attending the</p> <p>13 meetings pertained to receiving assistance</p> <p>14 from deputy marshals in the marshal service.</p> <p>15 When I requested that to our headquarters, I</p> <p>16 was denied. There were numerous requests but</p> <p>17 a continual denial.</p> <p>18 Once that denial was understood by</p> <p>19 the sheriffs, the point of me being there was</p> <p>20 just an added person in a small room. They</p> <p>21 had adequate leadership amongst the sheriffs</p> <p>22 throughout the state, chiefs of police.</p> <p>23 Unfortunately, they didn't -- I couldn't</p> <p>24 provide them anything. No point in me</p> <p>25 attending anymore.</p>	<p style="text-align: right;">Page 33</p> <p>1 BY MR. KERLIN:</p> <p>2 Q. If it won't invade discussions that you</p> <p>3 had with the office of general counsel.</p> <p>4 MR. KERLIN: As I understood it,</p> <p>5 Mr. Scarpato; is that fair?</p> <p>6 MR. SCARPATO: That is fair. Thank</p> <p>7 you, Paul.</p> <p>8 THE WITNESS: I think you need to</p> <p>9 repeat that if you would, please</p> <p>10 BY MR. KERLIN:</p> <p>11 Q. Sure. Were you given a reason why</p> <p>12 assistance was continually denied after you</p> <p>13 had requested it? And, again, I don't want</p> <p>14 to know about communications that you had</p> <p>15 with them. That would be privileged.</p> <p>16 A. No. If I'm not to discuss what OGC told</p> <p>17 me, then no, I don't have a reason.</p> <p>18 Q. Back to your attendance at the command</p> <p>19 center, especially early on, were you ever</p> <p>20 denied access to information that the North</p> <p>21 Dakota law enforcement had regarding</p> <p>22 developments at the protest?</p> <p>23 A. No. Not that I know of.</p> <p>24 Q. Okay. Did North Dakota provide you</p> <p>25 access to anything that you would want to</p>

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<p style="text-align: right;">Page 34</p> <p>1 see, or if you had questions about things, so</p> <p>2 it's really -- my question is, were they</p> <p>3 sharing information with you if you asked?</p> <p>4 A. Yes. Mostly verbally because I was</p> <p>5 standing there speaking to the sheriffs. No</p> <p>6 one ever hesitated in discussing things with</p> <p>7 me.</p> <p>8 Q. But it wasn't like they said, well,</p> <p>9 we're North Dakota, so you all should be</p> <p>10 involved, and we're not going to let you in</p> <p>11 here to hear what's going on; right?</p> <p>12 A. That's not the relationship we ever had</p> <p>13 in law enforcement here in North Dakota.</p> <p>14 Q. Would you describe the relationship you</p> <p>15 had with law enforcement in North Dakota.</p> <p>16 A. Very cooperative, to the best of our</p> <p>17 ability, very cooperative. There was never a</p> <p>18 time when, if I needed help from the Bismarck</p> <p>19 Police Department, that the chief of police</p> <p>20 wouldn't provide that help. There was never</p> <p>21 a time that if they needed assistance from</p> <p>22 us, that we wouldn't provide it. Never a</p> <p>23 time when, if I was traveling in North</p> <p>24 Dakota, and I saw a trooper on the side of</p> <p>25 the road that needed help, that I wouldn't</p>	<p style="text-align: right;">Page 36</p> <p>1 duties still running the district, had to</p> <p>2 attend meetings in Fargo, where the main</p> <p>3 office was, so I did have other travel</p> <p>4 involved. Two to three times per week.</p> <p>5 Q. Did you see or have access to drone and</p> <p>6 plane footage and pictures that were</p> <p>7 available in the command center?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever observe protestors that</p> <p>10 were on corps land then leave corps land and</p> <p>11 then protest at a site off of corps land?</p> <p>12 MR. SCARPATO: Objection,</p> <p>13 foundation, lack of personal knowledge.</p> <p>14 THE WITNESS: I guess I'm not --</p> <p>15 Bill, maybe you can advise me. I'm</p> <p>16 not sure if I'm supposed to answer the</p> <p>17 question once you object or just continue on.</p> <p>18 MR. SCARPATO: I appreciate the</p> <p>19 clarification, Mr. Ward. Unless I instruct</p> <p>20 you not to answer, you should answer the</p> <p>21 question. So you can go ahead and answer</p> <p>22 this one to the best of your ability, subject</p> <p>23 to the noted objection.</p> <p>24 THE WITNESS: I do believe I did</p> <p>25 see some video when they left corps land or</p>
<p style="text-align: right;">Page 35</p> <p>1 stop and help them. Or, conversely, that</p> <p>2 they wouldn't stop and help us. That's just</p> <p>3 how it was. It was a brotherhood.</p> <p>4 Q. With respect to the protests, do you</p> <p>5 think that the federal government provided</p> <p>6 the law enforcement assistance that was</p> <p>7 requested by law enforcement of North Dakota?</p> <p>8 A. No.</p> <p>9 Q. Do you think that's something they</p> <p>10 should have done?</p> <p>11 A. Yes.</p> <p>12 Q. At least early on -- and so I</p> <p>13 understand, when we were talking earlier that</p> <p>14 there was a change in your attendance at the</p> <p>15 command center, I believe you said around</p> <p>16 October-November, you said about halfway</p> <p>17 through, which would have been around, I</p> <p>18 think, October-November; does that sound</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Prior to that time period, can you give</p> <p>22 us an idea about how often you'd attend the</p> <p>23 command center.</p> <p>24 A. Approximately two to three times per</p> <p>25 week with the understanding that I had other</p>	<p style="text-align: right;">Page 37</p> <p>1 incidents that were off corps land.</p> <p>2 BY MR. KERLIN:</p> <p>3 Q. When you saw some of that footage, in</p> <p>4 those photographs, would they be using the</p> <p>5 corps land as a base of operation, in</p> <p>6 essence?</p> <p>7 MR. SCARPATO: Objection, vague.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MR. KERLIN:</p> <p>10 Q. But it was your understanding that they</p> <p>11 were camping out on the corps land; is that</p> <p>12 correct?</p> <p>13 MR. SCARPATO: Objection, misstates</p> <p>14 the testimony.</p> <p>15 THE WITNESS: Could you repeat the</p> <p>16 question, please.</p> <p>17 BY MR. KERLIN:</p> <p>18 Q. Sure. At some point did you become</p> <p>19 aware that protestors were camping out on US</p> <p>20 Army Corps of Engineers land?</p> <p>21 MR. SCARPATO: Objection, lacks</p> <p>22 personal knowledge.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MR. KERLIN:</p> <p>25 Q. It sounds like you had personal</p>

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602; 611 vague and
compound

<p style="text-align: right;">Page 38</p> <p>1 knowledge of that; is that correct, Mr. Ward?</p> <p>2 A. Yes.</p> <p>3 Q. You saw them camping out on corps land;</p> <p>4 right?</p> <p>5 A. Not personally. I wasn't at the scene,</p> <p>6 but the video and the things that were</p> <p>7 provided to the command center.</p> <p>8 Q. Did you also have an understanding that,</p> <p>9 after some of the protestors would go out</p> <p>10 either into the community or to the area</p> <p>11 where DAPL workers were working, they would</p> <p>12 then return back to corps land, where they</p> <p>13 would stay overnight?</p> <p>14 A. Please repeat that.</p> <p>15 Q. Sure. With respect to the protestors,</p> <p>16 did you have an understanding or become aware</p> <p>17 that protestors would be on corps land and</p> <p>18 then leave corps land and go somewhere else,</p> <p>19 either out into the community or to areas</p> <p>20 where the workers were working or trying to</p> <p>21 work for the pipeline, and then protest in</p> <p>22 those areas and then return back to corps</p> <p>23 land at the end of the day or overnight?</p> <p>24 MR. SCARPATO: Objection, vague and</p> <p>25 compound.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. Given the size of the protest, I</p> <p>2 mean, is it your understanding that the</p> <p>3 protest grew over time and eventually reached</p> <p>4 many thousands of people?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. For instance, at the federal</p> <p>7 courthouse, can you give us an idea of</p> <p>8 approximately how many people there would</p> <p>9 have been that showed up to protest.</p> <p>10 A. However many people it would take to be</p> <p>11 shoulder to shoulder to take up a full city</p> <p>12 block. I don't know how many people that is.</p> <p>13 A lot.</p> <p>14 Q. Given that the resources that you had at</p> <p>15 your disposal, 19 deputies, were you able to</p> <p>16 keep the federal courthouse secure, or did</p> <p>17 you require other assistance to do so?</p> <p>18 A. 19 deputies consisted of all the</p> <p>19 deputies I had in the district. That</p> <p>20 included Fargo, Grand Forks, Minot, and</p> <p>21 Bismarck. Bismarck was maybe five. If it</p> <p>22 was us five plus me against hundreds, if not</p> <p>23 thousands, we would be whapped, even with the</p> <p>24 assistance of the Bismarck Police Department,</p> <p>25 which we did have. When myself and one of my</p>
<p style="text-align: right;">Page 39</p> <p>1 THE WITNESS: Yes, I was aware of</p> <p>2 that. I was aware they were in pipeline</p> <p>3 areas, and I was aware when of it came to the</p> <p>4 federal courthouse in Bismarck. They were</p> <p>5 right outside the front door.</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. When those things happened, when those</p> <p>8 protestors showed up, to use your example at</p> <p>9 the federal courthouse, did that require a</p> <p>10 law enforcement response?</p> <p>11 A. Oh, yes.</p> <p>12 Q. And simply for public safety; correct?</p> <p>13 A. For what?</p> <p>14 Q. For public safety and to control the</p> <p>15 crowd. I mean, in other words, once these</p> <p>16 protestors arrived at the courthouse, there</p> <p>17 has to be some type of law enforcement</p> <p>18 response, doesn't there?</p> <p>19 A. Yes, there was.</p> <p>20 Q. And so in your experience in 40 years in</p> <p>21 law enforcement -- in law enforcement, some</p> <p>22 form of law enforcement response was required</p> <p>23 because the protestors had shown up at the</p> <p>24 courthouse; right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 deputies went out to spoke to the commander</p> <p>2 at the Bismarck Police Department, and I</p> <p>3 don't remember who it was, but he looked at</p> <p>4 me, and he said, Marshal, if they want your</p> <p>5 building, they're going to take it. We can't</p> <p>6 stop them. That's how many there were. So</p> <p>7 with the assistance of the Bismarck Police</p> <p>8 Department and the deputies I had and the</p> <p>9 court security stuff, we were outnumbered 20</p> <p>10 to one. No, more than that, 50 to one.</p> <p>11 Nothing we could have done.</p> <p>12 Q. And the Bismarck Police Department,</p> <p>13 though, they were willing to provide the</p> <p>14 support that they could; is that accurate?</p> <p>15 A. Yes. To the best of their ability, yes.</p> <p>16 Q. And were they, along with you and the</p> <p>17 other deputy marshals, able to keep the</p> <p>18 courthouse safe?</p> <p>19 A. Mainly because it was, although loud,</p> <p>20 the protest was peaceful.</p> <p>21 Q. Were you aware of whether coming to the</p> <p>22 assistance of the US Marshals and helping to</p> <p>23 keep secure the federal courthouse, that tha</p> <p>24 was a significant -- that that required a</p> <p>25 significant amount of resources from the</p>

41:21-
42:8
602; 611
vague

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1 Bismarck Police Department?
2 MR. SCARPATO: Objection, vague,
3 lack of personal knowledge.
4 THE WITNESS: Significant in the
5 fact that they gave me all they had. They
6 still had to maintain peace within the city,
7 but whatever was left over, they gave me. So
8 yes, that's significant.
9 BY MR. KERLIN:
10 Q. You also mentioned that the
11 protestors -- you were aware that the
12 protestors had mobilized and gone to other
13 areas. We talked about the federal
14 courthouse, then also at the construction
15 area?
16 A. Yes. And I need to clarify that because
17 I'm not 100 percent sure how I became aware
18 of that.
19 Q. Uh-huh.
20 A. I may have seen it on the news at night.
21 I may have seen it on the drone video, or
22 they may have told me at the command center,
23 but I was aware of it, yes.
24 Q. As a law enforcement professional with
25 40 years of service and experience, when the

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1 protestors showed up at the construction
2 site, did that require law enforcement
3 response and presence?
4 A. Yes, it certainly did.
5 Q. With respect to that area, do you know
6 who was the law enforcement -- the chief law
7 enforcement officer that was in charge of
8 that response?
9 A. I don't know.
10 Q. Would that have fallen --
11 A. It ultimately would have been the
12 command center, but I don't know who answered
13 to the command center at the scene.
14 Q. Would that have been in Morton County?
15 A. I believe so, but I'm not sure.
16 Q. After the protests and demonstrations at
17 the federal courthouse, those protestors then
18 went back to US Army Corps of Engineers land;
19 is that correct?
20 A. I don't know. They left Bismarck.
21 That's all I know.
22 Q. Was there any effort, to your knowledge,
23 by any federal agency or law enforcement to
24 remove protestors or to keep them from
25 returning to corps land?

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1 A. Not that I know of.
2 Q. There weren't any other federal agencies
3 that coordinated with you as the US Marshal
4 that brought up, hey, you know, maybe we
5 should remove these protestors from corps
6 land, they're causing problems here, nothing
7 like that?
8 A. No.
9 Q. Do you know why there wasn't a federal
10 law enforcement response to try and remove
11 the violent protestors from corps land?
12 MR. SCARPATO: Objection, vague.
13 THE WITNESS: I would have to
14 assume, if there was a request made by any
15 other agency other than the marshal service,
16 that they received the same declination that
17 I received. I don't know that. I just know
18 that no one else could respond.
19 BY MR. KERLIN:
20 Q. Do you know why federal law enforcement
21 didn't do more to try and prevent what was
22 going on on US Army Corps of Engineers land?
23 A. I don't know, no. I know that I --
24 prior to the influx of protestors, to a
25 magnificent number of people, there was no

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1 request made through me, not at the early
2 onset.
3 Can I ask a request, please? I'd
4 like to take a break, if I could, because I
5 have diabetes, and I need to eat something
6 quick because --
7 MR. KERLIN: Thank you. You want
8 to do a ten-minute break? Is that sufficient
9 time?
10 THE WITNESS: Ten minutes is fine.
11 MR. KERLIN: Perfect. We'll go off
12 the record.
13 THE VIDEOGRAPHER: Off the record.
14 Universal coordinated time is 1530. We're
15 off the record.
16 (Pause in proceedings)
17 THE VIDEOGRAPHER: We're now back
18 on the record. Universal coordinated time is
19 1540.
20 BY MR. KERLIN:
21 Q. Mr. Ward, we're back on the record after
22 a short break. Are you able to continue?
23 A. Yes.
24 Q. Okay. I want to talk to you a little
25 bit about the command center that you

41:21-42:8 602;
611 vague

44:9-45:2
401-402;
602; 611
vague

43:5-15
602

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<p style="text-align: right;">Page 46</p> <p>1 mentioned. Can you tell me what that</p> <p>2 consisted of.</p> <p>3 A. I didn't hear the beginning of your</p> <p>4 question.</p> <p>5 Q. Sure. The command center, can you tell</p> <p>6 us a little about what the command center was</p> <p>7 that you had mentioned.</p> <p>8 A. Well, it was a large conference-type</p> <p>9 room with individual stations set up with</p> <p>10 commanders of the sheriff departments having</p> <p>11 individual stations and then small meeting</p> <p>12 rooms off to the sides of that large</p> <p>13 conference room.</p> <p>14 Q. Was Sheriff Paul Laney one of those that</p> <p>15 was at the command center?</p> <p>16 A. Yes.</p> <p>17 Q. Were there any other law enforcement</p> <p>18 from the federal government or any agency in</p> <p>19 addition to you that attended the command</p> <p>20 center, to your knowledge?</p> <p>21 A. On occasion there were FBI agents in</p> <p>22 supervision.</p> <p>23 Q. How often did those FBI agents attend?</p> <p>24 A. I don't know because I wasn't there at</p> <p>25 each -- on each individual day, so I don't</p>	<p style="text-align: right;">Page 48</p> <p>1 taken and picking up where we left off last.</p> <p>2 (Exhibit 311 marked)</p> <p>3 BY MR. KERLIN:</p> <p>4 Q. Can you see the document that we're</p> <p>5 trying to display on the screen, Mr. Ward?</p> <p>6 A. Yes, I can see it.</p> <p>7 Q. Okay. It says for the "to" line, US</p> <p>8 and-all. Would those be email -- was that,</p> <p>9 like, a LISTSERV email account that you would</p> <p>10 receive as well?</p> <p>11 A. Not unless it was forwarded to me.</p> <p>12 Q. Okay.</p> <p>13 A. I don't think I was.</p> <p>14 Q. The date of this email is August 28th,</p> <p>15 2016. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And it says Chris Myers. Are you</p> <p>18 familiar with Chris Myers?</p> <p>19 A. Yes.</p> <p>20 Q. Did you work with him when you were the</p> <p>21 US Marshal for North Dakota?</p> <p>22 A. Yes. He was the United States Attorney</p> <p>23 at the time.</p> <p>24 Q. The subject matter of this email is</p> <p>25 update on the Dakota Access Pipeline and</p>
<p style="text-align: right;">Page 47</p> <p>1 know how often they were there.</p> <p>2 Q. What about any representatives from the</p> <p>3 US Army Corps of Engineers? Were any of</p> <p>4 those ever present?</p> <p>5 A. There was on occasion, yes, that I saw.</p> <p>6 Like I said, I wasn't there for each day, so</p> <p>7 I don't know.</p> <p>8 Q. With respect to the ones that you saw,</p> <p>9 can you recall the names of any of those</p> <p>10 individuals?</p> <p>11 A. No, I don't know his name.</p> <p>12 Q. Of the times that you attended, were the</p> <p>13 representatives from the Army corps, were</p> <p>14 they typically there, or were they only there</p> <p>15 once or twice? Can you give us an idea about</p> <p>16 the frequency when you attended that they</p> <p>17 would be present.</p> <p>18 A. I don't know.</p> <p>19 Q. Okay. I'd like to --</p> <p>20 MR. KERLIN: Mr. Diaz, if you could</p> <p>21 bring up Exhibit 311.</p> <p>22 For the record, we're going to mark</p> <p>23 this as Exhibit 311 with continued numbering</p> <p>24 deposition exhibits on behalf of the</p> <p>25 witnesses that State of North Dakota has</p>	<p style="text-align: right;">Page 49</p> <p>1 protest matter. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall that with respect to when</p> <p>4 the protests started that they would have</p> <p>5 started well before this date, August 28th,</p> <p>6 2016?</p> <p>7 MR. SCARPATO: Objection, vague.</p> <p>8 THE WITNESS: I'm sorry? You'd</p> <p>9 have to repeat that question, please.</p> <p>10 BY MR. KERLIN:</p> <p>11 Q. Sure. The subject is an update on the</p> <p>12 Dakota Access Pipeline and protest matter,</p> <p>13 and it's dated August 28th, 2016. To your</p> <p>14 knowledge, did the protests regarding the</p> <p>15 Dakota Access Pipeline start prior to that</p> <p>16 date?</p> <p>17 A. I'm not sure when it started. I don't</p> <p>18 know when.</p> <p>19 Q. In the first paragraph, it says that we</p> <p>20 met with pipeline company officials and</p> <p>21 requested they delay their work until the</p> <p>22 week of September 14th. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall attending a meeting with</p> <p>25 representatives from the company that was</p>

46:20-49:18
602

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49:24-51:5 401-402

<p style="text-align: right;">Page 50</p> <p>1 building the Dakota Access Pipeline?</p> <p>2 A. Yes, I do.</p> <p>3 Q. If we go to the second paragraph, about</p> <p>4 three lines down it says, Paul Ward was the</p> <p>5 other federal partner in the meeting, and he</p> <p>6 was very frustrated too. Do you recall that?</p> <p>7 Do you recall going to the meeting?</p> <p>8 A. I don't recall that they were present in</p> <p>9 the room or if it was a video meeting, but I</p> <p>10 do recall some type of meeting.</p> <p>11 Q. I'm going to go up, I kind of skipped</p> <p>12 ahead a little bit, but I just want to</p> <p>13 establish, you do recall being present in</p> <p>14 person or by video with some member of the</p> <p>15 company; correct?</p> <p>16 A. Yes.</p> <p>17 Q. The prior sentence it says, I was very</p> <p>18 stern in my approach, and it even got</p> <p>19 personal when the company claimed that</p> <p>20 federal law enforcement was "weak" and should</p> <p>21 be prosecuting everyone for traveling in</p> <p>22 interstate commerce for breaking the law.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you agree that the law enforcement</p>	<p style="text-align: right;">Page 52</p> <p>1 wrote this email, but I don't recall.</p> <p>2 Q. And then you all started to walk out and</p> <p>3 then stopped and then continued the meeting.</p> <p>4 Does that seem familiar at all?</p> <p>5 A. Not really. You have to understand this</p> <p>6 is almost six years ago for me. I've done a</p> <p>7 lot of things -- I've done a lot of things in</p> <p>8 my life since the last six years that have</p> <p>9 overtaken my thought process other than this</p> <p>10 stuff. This brings back a recollection, but</p> <p>11 I don't recall specifically anybody walking</p> <p>12 out, or maybe Chris stood up or someone did.</p> <p>13 I don't know.</p> <p>14 Q. Understand. And again, if you don't</p> <p>15 recall, that's a perfectly fine answer too.</p> <p>16 A. Okay.</p> <p>17 Q. This is my opportunity to ask you</p> <p>18 questions about it and understand the</p> <p>19 significant factors.</p> <p>20 (Exhibit 312 marked)</p> <p>21 MR. KERLIN: I'd like to go to 312.</p> <p>22 This is an email date September 5th of 2016,</p> <p>23 so about a week later.</p> <p>24 BY MR. KERLIN:</p> <p>25 Q. Do you see that?</p>
<p style="text-align: right;">Page 51</p> <p>1 response when the protests initially started</p> <p>2 was weak, that the federal response was weak?</p> <p>3 A. Weak wasn't my term. I didn't say that.</p> <p>4 Somebody from, apparently, the company said</p> <p>5 that.</p> <p>6 Q. But do you agree with that? Do you</p> <p>7 think it was a weak federal law enforcement</p> <p>8 response?</p> <p>9 MR. SCARPATO: Objection, vague.</p> <p>10 THE WITNESS: I wouldn't say it was</p> <p>11 weak.</p> <p>12 BY MR. KERLIN:</p> <p>13 Q. How would you characterize it?</p> <p>14 A. Nonexistent.</p> <p>15 Q. Then if we go to the -- that sentence we</p> <p>16 have highlighted, we were the bad cops in</p> <p>17 this meeting for sure, and in the middle we</p> <p>18 started to simply walk out. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall that occurring in the</p> <p>21 meeting that it had kind of reached a level</p> <p>22 of tension that you and the other attendee,</p> <p>23 I'm assuming it's Mr. Myers, was he with you</p> <p>24 at the meeting, or do you recall?</p> <p>25 A. I don't recall. I assume so since he</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Yes.</p> <p>2 Q. From James Thomas. Do you know who</p> <p>3 James Thomas is?</p> <p>4 A. Yes, I do.</p> <p>5 Q. And he's an assistant US Attorney in</p> <p>6 Bismarck at the time; correct?</p> <p>7 A. Yes.</p> <p>8 Q. It says, one of the recipients on the</p> <p>9 email is Paul Ward, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Subject is DAPL corps notes of LE</p> <p>12 meeting with tribal leaders, September 5,</p> <p>13 2016, law enforcement sensitive. Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And in the initial email, and I</p> <p>17 want to go -- it's a forward, but it says,</p> <p>18 see attached. Do you see that?</p> <p>19 A. Oh, yes, okay. Yeah, I do.</p> <p>20 Q. If we go to the bottom, which is the</p> <p>21 rest of the email that -- it has this</p> <p>22 September 5th email, and it says through</p> <p>23 Rosa, Chairman Archambault. Do you know who</p> <p>24 Chairman Archambault is?</p> <p>25 A. Yes, I do.</p>

51:6-14
401-402; 403; 611
vague

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<p style="text-align: right;">Page 54</p> <p>1 Q. Is he part of the Standing Rock Sioux</p> <p>2 tribe at the time?</p> <p>3 A. Yes.</p> <p>4 Q. Their chairman. And it says, they</p> <p>5 requested a meeting regarding the activities</p> <p>6 over the past day or two. Do you recall</p> <p>7 attending a meeting with the Standing Rock</p> <p>8 Sioux tribe at the beginning?</p> <p>9 A. I do, yes.</p> <p>10 Q. Okay.</p> <p>11 MR. KERLIN: Can we go to the</p> <p>12 attachment, which is the next page. And,</p> <p>13 again, for the record, this will be marked</p> <p>14 Exhibit 312. If you go back one page. There</p> <p>15 we go.</p> <p>16 BY MR. KERLIN:</p> <p>17 Q. It's got a number of attendees here. We</p> <p>18 go down the list, you're on the list there,</p> <p>19 US Marshal Paul Ward. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And then Jake O'Connell from the FBI.</p> <p>22 Do you see his --</p> <p>23 MR. KERLIN: Oh, we need to go back</p> <p>24 a page. Sorry. To the top, that is.</p> <p>25</p>	<p style="text-align: right;">Page 56</p> <p>1 meeting.</p> <p>2 Q. Your counsel's raised an issue. You</p> <p>3 haven't had the opportunity to read the whole</p> <p>4 document. Would you like to read the whole</p> <p>5 document? Then I'll ask a question about it.</p> <p>6 A. Okay. I haven't read it in its</p> <p>7 entirety, but I perused it. I guess you can</p> <p>8 ask your question.</p> <p>9 Q. By this time period, September 5th,</p> <p>10 2016, did you think that the protestors that</p> <p>11 were active regarding the DAPL pipeline were</p> <p>12 out of control?</p> <p>13 A. Yes. Seemed to be out of control in</p> <p>14 that -- if being rebellious at the time</p> <p>15 consisted of what you would term as out of</p> <p>16 control, then yes, if that was the time</p> <p>17 period where the roadblocks needed to be put</p> <p>18 up and the barricades that they used, that</p> <p>19 type of thing, if that's the same period,</p> <p>20 yes.</p> <p>21 Q. I'd like to -- did you at some point</p> <p>22 find out that there was --</p> <p>23 MR. KERLIN: You can take this</p> <p>24 exhibit down. Before we do --</p> <p>25</p>
<p style="text-align: right;">Page 55</p> <p>1 BY MR. KERLIN:</p> <p>2 Q. Do you recall Mr. O'Connell being with</p> <p>3 the FBI?</p> <p>4 A. Yes.</p> <p>5 Q. Was he one of the FBI agents that you</p> <p>6 mentioned earlier that might have attended</p> <p>7 the command center from time to time?</p> <p>8 A. He was the supervisor in the Bismarck</p> <p>9 office.</p> <p>10 Q. How would you characterize this meeting</p> <p>11 with Standing Rock Sioux tribe</p> <p>12 representatives?</p> <p>13 MR. SCARPATO: Just stepped in here</p> <p>14 for a moment and note for the record that</p> <p>15 Mr. Ward has not had an opportunity to review</p> <p>16 the document in full.</p> <p>17 BY MR. KERLIN:</p> <p>18 Q. Mr. Ward, would you like to --</p> <p>19 A. To be honest with you, I don't recall</p> <p>20 the context of this whole meeting.</p> <p>21 Q. Okay.</p> <p>22 A. I recall meeting with David Archambault</p> <p>23 one time alone. Well, not alone, but that</p> <p>24 was here in the US Attorney's office. I</p> <p>25 don't recall context of this particular</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MR. KERLIN:</p> <p>2 Q. Mr. Ward, with respect to this time</p> <p>3 period, and I know there's a meeting with</p> <p>4 Standing Rock Sioux tribe --</p> <p>5 MR. KERLIN: And you can stop</p> <p>6 sharing the screen, Jose.</p> <p>7 BY MR. KERLIN:</p> <p>8 Q. We're talking about September 5th,</p> <p>9 around that time period of 2016, and I showed</p> <p>10 you the meeting that occurred with Standing</p> <p>11 Rock Sioux tribe, and you've already been to</p> <p>12 the command center. You've spoken at the</p> <p>13 command center, I take it, by this time, with</p> <p>14 Sheriff Laney as well as Sheriff Kirchmeier?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. As a 40-year law enforcement</p> <p>17 professional, at this point do you think that</p> <p>18 there was anything that law enforcement from</p> <p>19 North Dakota was doing that was causing</p> <p>20 problems or escalating things?</p> <p>21 MR. SCARPATO: Objection, vague,</p> <p>22 lack of personal knowledge.</p> <p>23 THE WITNESS: Absolutely not. They</p> <p>24 didn't cause the problem, they reacted to it.</p> <p>25</p>

54:4-56:1 401-402

56:9-20
602; 611
vague57:16-
25
602;
611
vague
701/702
expert
test.

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58:2-20
602; 611 vague and
compound; 701/702
expert test.

58:21-59:1
602; 701/702
expert test.

59:10-61:12
602, 701/702 expert
test.

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1 BY MR. KERLIN:
2 Q. And as a 40-year law enforcement
3 professional and at the time of these events
4 that we're discussing, you were the US
5 Marshal for North Dakota. Do you think that
6 the law enforcement response by North Dakota
7 was appropriate and measured?
8 MR. SCARPATO: Objection, vague,
9 compound.
10 THE WITNESS: It was not only
11 appropriate, it was professional and needed.
12 BY MR. KERLIN:
13 Q. Do you have any criticism with North
14 Dakota's law enforcement response at any
15 point during the protests when you were the
16 US Marshal until your retirement?
17 A. I have no criticism of the local law
18 enforcement or the state law enforcement
19 response; I have a criticism that's on the
20 federal side.
21 Q. If there's assertions in this lawsuit by
22 the United States that law enforcement
23 engaged in excessive force, do you agree with
24 that?
25 A. No, I don't. I didn't witness or hear

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1 about anything that was excessive on the
2 response of law enforcement.
3 Q. Do you agree with me that the law
4 enforcement activities by the State of North
5 Dakota, especially when it came to your
6 interactions at the courthouse, were
7 collaborative and sought to maintain law and
8 order?
9 A. Yes.
10 Q. Do you agree, as the federal marshal for
11 the District of North Dakota, that the US
12 Army Corps of Engineers, by allowing
13 protestors to camp on their lands, extended
14 the protests and the resulting costs of it?
15 MR. SCARPATO: Objection, vague,
16 assumes facts not in evidence,
17 mischaracterizes the testimony, foundation,
18 lack of personal knowledge.
19 You can answer the question.
20 THE WITNESS: I do agree, yes. I
21 think that some type of request for a
22 response to take care of a minimal amount of
23 people first protesting on the land would
24 have been the appropriate action as opposed
25 to waiting until it got out of control.

Page 60

1 BY MR. KERLIN:
2 Q. And that would have been -- would you
3 agree with me that the opportunity to do so
4 would have been early on in the protests?
5 MR. SCARPATO: Objection, vague.
6 THE WITNESS: I think that the
7 opportunity they had would have and should
8 have been to request assistance to remove a
9 minimal amount of people at the early
10 onset --
11 BY MR. KERLIN:
12 Q. When you say --
13 A. -- opposed to waiting.
14 Q. I'm sorry. I didn't mean to interrupt.
15 A. As opposed to waiting till it got out of
16 control.
17 Q. And that request, would it be accurate
18 to say that request would have been needed to
19 have been made to North Dakota law
20 enforcement to remove those individuals from
21 the US Army Corps of Engineers land; correct?
22 A. Yes. And without -- I have to -- before
23 we answer your question, I'm not 100 percent
24 sure that the request should have been only
25 to local law enforcement in that, if they had

60:2-16
611

Page 61

1 any rangers that could issue a summons,
2 typically that summons and the response to
3 that summons through the court system would
4 come through the federal court system, and
5 the marshal service would serve that order.
6 If they had made the request. I'm not
7 100 percent, but if it would have come
8 through, then we would have had to deal with
9 it. But they didn't. Whether or not they
10 did it with the local law enforcement or not,
11 I don't believe they did, and that's the
12 result of the numerous people showing up.
13 Q. Had they made that request, US Army
14 says, hey, you know, there's trespassers on
15 our land, please come remove them, that would
16 have cut down the protests; right?
17 MR. SCARPATO: Objection, vague,
18 assumes facts not in evidence, foundation.
19 THE WITNESS: I don't know.
20 BY MR. KERLIN:
21 Q. Let me ask it a different way. By not
22 doing so and then allowing them to stay
23 through the spring of 2017, those actions did
24 allow the protests to continue for many
25 months afterwards; correct?

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<p style="text-align: right;">Page 62</p> <p>1 MR. SCARPATO: Objection, vague, 2 lack of personal knowledge, foundation, 3 mischaracterizes the evidence, and assumes 4 facts not in evidence. 5 THE WITNESS: I don't know that. I 6 don't know what could have put a stop to 7 this. 8 BY MR. KERLIN: 9 Q. Did you become aware at some point that 10 the US Army Corps of Engineers entertained 11 the idea of allowing or issuing what's known 12 as a special use permit? 13 A. I've heard that term, but I'm not aware 14 of what the procedure was. 15 Q. Okay. 16 MR. KERLIN: Jose, would you bring 17 up Exhibit 206, please. 18 (Exhibit 206 referenced) 19 BY MR. KERLIN: 20 Q. This is a fairly lengthy exhibit, and so 21 I want to show you the first page, and I want 22 to give you an opportunity to go through the 23 whole thing. It will take a little while. 24 There are portions that are redacted. That 25 means that there's an assertion of</p>	<p style="text-align: right;">Page 64</p> <p>1 was -- the corps was going to provide, 2 potentially, a special use permit or allow 3 the tribe to make an application for the 4 special use permit to be on corps land? 5 A. Apparently. I don't know -- I recognize 6 the term, but I don't know -- I don't recall 7 what, particularly, that's about. 8 Q. If you go down in the document -- I want 9 to go to the end of -- I guess it's page 34, 10 at the end of page 4, this exhibit. And, 11 again, this is a forward of the thing. I'm 12 trying to go back through it so I can kind of 13 take you through the time, take you through 14 the entire document. It's just awkward to do 15 it remotely. So I apologize for that. 16 MR. KERLIN: Jose -- Mr. Diaz, if 17 you'll zoom out. 18 BY MR. KERLIN: 19 Q. I just kind of want to give you an 20 overview of the document. This is the first 21 in the string, I believe. And then it's from 22 a -- it's from a James Startzell. Do you 23 know Mr. Startzell? 24 A. No, I don't know him. 25 Q. It mentions that there's no significant</p>
<p style="text-align: right;">Page 63</p> <p>1 attorney-client or work product or privileges 2 by the United States, so that information is 3 blocked out. To the extent you recall 4 something that was in there, none of my 5 questions are going to be asking about the 6 contents of what's been redacted. Okay? 7 A. Okay. 8 Q. Here on the initial "to" line -- I'm 9 sorry, CC line. I spoke incorrect. It looks 10 like you're CCed on the email, and it's 11 September 7th of 2016. Do you see that? 12 A. Yes. 13 Q. It's from James Thomas. We've talked 14 about him; correct? 15 A. Yes. 16 Q. The subject line in this email has FW, 17 forward, special use permit request for 18 additional information, draft, then it has 19 unclassified, MSG, MSG, re DAPL, corps 20 special use permanent and related authority. 21 Do you see that? 22 A. Yes. 23 Q. At some point did you become -- I guess 24 this is dated September 7th. Would you agree 25 that, by then, you became aware that there</p>	<p style="text-align: right;">Page 65</p> <p>1 update on activities related to DAPL, 2 according to our contact with HQ, USACE, the 3 notification for the easement permit has not 4 yet been sent to Congress. 5 Do you know anything about that? 6 A. I don't know. I don't recall this. I 7 don't know. 8 Q. Okay. 9 MR. KERLIN: I want to go to the 10 next -- if we can go up one in the chain, so 11 now we're going to the next email here at the 12 bottom. 13 BY MR. KERLIN: 14 Q. Do you know Keith Fink? 15 A. No, I don't. 16 Q. It says, Chairman -- I'm reading this 17 email, and, again, it's directed to James 18 Startzell, Chairman Archambault contacted 19 Eric Stasch at Oahe Project providing a map 20 for his special use permit request. 21 Mr. Stasch replied to the chairman that 22 permit decision has been pulled up to HQ. 23 Again, you don't any knowledge with 24 respect to whether there was any permit or 25 permit application; is that fair to say?</p>

63:8-65:7 401-402; 602

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<p style="text-align: right;">Page 66</p> <p>1 A. Yes, that's fair to say. I have no 2 knowledge. 3 Q. Okay. The next line says, current 4 estimates at the cannonball protest sites is 5 still 300 to 500 people. 6 To your knowledge, did the protest 7 grow significantly from the 300 to 500 people 8 range? 9 A. Yes. 10 MR. SCARPATO: Objection, vague. 11 BY MR. KERLIN: 12 Q. Would it be fair to say that it 13 increased by an order of magnitude to the 14 3,000 or 5,000 people range or more? 15 A. I would say potentially more. 16 Q. And that's based upon your personal 17 observations in the command center as well as 18 being the US Marshal for the District of 19 North Dakota; correct? 20 A. Yes. 21 MR. KERLIN: If we go up to the 22 next email -- actually, I'm sorry. Before we 23 go there, let's take that down. 24 BY MR. KERLIN: 25 Q. When we were talking earlier about being</p>	<p style="text-align: right;">Page 68</p> <p>1 one page for us here. 2 BY MR. KERLIN: 3 Q. Now we're at September 6th of 2016, and 4 it mentions a draft of the response to the 5 special -- Standing Rock -- SRST special use 6 permit application. 7 And, again, I understand you don't 8 have a recollection of the specifics 9 regarding the permit, but do you recall any 10 discussion about any bond or liability 11 insurance requirements in any of the 12 discussions you had with anybody besides 13 anybody at the federal agencies? 14 A. No. 15 Q. And I take it you don't know whether or 16 not any of those requirements, to the extent 17 there were any with respect to the 18 application, were ever satisfied; is that 19 correct? 20 A. I think you need to repeat that, please. 21 Q. Sure. With respect to any conditions 22 that were required before the permit would be 23 issued, is it fair to say you don't have any 24 knowledge about those? 25 A. No.</p>
<p style="text-align: right;">Page 67</p> <p>1 able to potentially stop the protests before 2 they could get out of control, would that 3 have been prior to August of 2016? 4 MR. SCARPATO: Objection, 5 foundation. 6 BY MR. KERLIN: 7 Q. I'm sorry. Prior to the date of this 8 email, so August 21st, 2016? 9 MR. SCARPATO: Same objection. 10 THE WITNESS: I assume so. I don't 11 know that. 12 BY MR. KERLIN: 13 Q. Okay. And then this next email, it's a 14 back and forth between Startzell and Fink 15 with a lot of people CCed on it. Again, it 16 talks about the special use permit. I just 17 wanted you to have the opportunity to read 18 that. I don't have a specific question about 19 it because we've discussed your knowledge or 20 lack thereof about the special use permit 21 process application. 22 MR. KERLIN: If we go to the next 23 email, so, again, this is Wednesday. Yep. 24 If we go to the next -- yes. Starts at the 25 bottom. Now we're -- trying to get it all on</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. 2 MR. KERLIN: And then you can take 3 that down, Mr. Diaz. If we go -- again, we 4 can just go back one page. There's forwards, 5 and I believe everything else has been 6 redacted, but if we go back to the front 7 page. 8 BY MR. KERLIN: 9 Q. That's the email that you forwarded. So 10 it had all of these, the different emails 11 below it that we've gone over, they 12 ultimately did get forwarded to you; right? 13 A. Yes. 14 Q. Were you aware -- 15 MR. KERLIN: You can take that down 16 now. 17 BY MR. KERLIN: 18 Q. I just want to make sure, do you know 19 whether or not a permit was ever issued by 20 the corps? 21 A. I don't recall. 22 Q. Do you recall a press release that was 23 issued by the US Army Corps of Engineers 24 stating that a permit had been issued? 25 A. No, I don't recall that.</p>

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Introduces
new material

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<p style="text-align: right;">Page 70</p> <p>1 MR. KERLIN: Could you bring up</p> <p>2 Exhibit 26, please.</p> <p>3 (Exhibit 26 referenced)</p> <p>4 BY MR. KERLIN:</p> <p>5 Q. Showing you an exhibit which has been</p> <p>6 marked as 26, which is an exchange between</p> <p>7 John Henderson -- do you know who John</p> <p>8 Henderson is?</p> <p>9 A. I don't know him personally, but I know</p> <p>10 his title.</p> <p>11 Q. He was a commander of the US Army of</p> <p>12 Corps of Engineers for the Omaha District.</p> <p>13 Were you aware of that, that he was the</p> <p>14 commander for that district?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. Yes, I was.</p> <p>18 Q. And this is from him to</p> <p>19 Mr. Archambault -- Chairman Archambault.</p> <p>20 Were you aware of any of the particulars</p> <p>21 about what the corps was proposing as far as</p> <p>22 allowing access for protestors on corps land?</p> <p>23 A. I believe so, yes. It's not a subject</p> <p>24 that I'm particularly remembering well, to be</p> <p>25 honest with you.</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Any contact I had --</p> <p>2 MR. SCARPATO: Objection, facts not</p> <p>3 in evidence.</p> <p>4 THE WITNESS: Any contact that I</p> <p>5 had in reference to a subject such as what</p> <p>6 you just mentioned was early on when I was at</p> <p>7 meetings at the command center, and someone</p> <p>8 from the Corps of Engineers was on the other</p> <p>9 end, or someone from the DAPL company was on</p> <p>10 the other end, which was very minimal</p> <p>11 because, shortly after that, when I made the</p> <p>12 request for assistance, I was denied, and,</p> <p>13 like I said before, was no point in attending</p> <p>14 the meetings if I couldn't assist them.</p> <p>15 BY MR. KERLIN:</p> <p>16 Q. Someone who has been involved in law</p> <p>17 enforcement, again, for four decades, do you</p> <p>18 think it's a good idea not to keep, for</p> <p>19 instance, the Corps of Engineers with federal</p> <p>20 land they're permitting to be used or</p> <p>21 potentially not to be used, not to</p> <p>22 communicate with the US Marshal for that</p> <p>23 state?</p> <p>24 MR. SCARPATO: Objection, vague and</p> <p>25 compound.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Okay. Did the Corps of Engineers</p> <p>2 contact you and let you know, as the US</p> <p>3 Marshal, that, you know, this is what we are</p> <p>4 going to do, or did they provide you</p> <p>5 information, or do you recall anything like</p> <p>6 that?</p> <p>7 A. No, I don't.</p> <p>8 Q. In other words, as the US Marshal for</p> <p>9 the District of North Dakota, did the US Army</p> <p>10 Corps of Engineers keep the marshal for that</p> <p>11 jurisdiction in the loop for what they were</p> <p>12 doing with federal lands?</p> <p>13 A. No. I may have received, like you're</p> <p>14 seeing, some of these exhibits, you know, a</p> <p>15 CC copy of an email, but I don't recall ever</p> <p>16 having been apprised by Colonel Henderson or</p> <p>17 anyone else in regards to what was going on</p> <p>18 on federal land.</p> <p>19 Q. They didn't, you know, for instance,</p> <p>20 pick up the phone and call you and say, we</p> <p>21 just want to make sure you are aware that we</p> <p>22 have this situation, and we decided to do</p> <p>23 this, that, or the other thing about allowing</p> <p>24 them to stay there, camp, or build structures</p> <p>25 or roads or things like that?</p>	<p style="text-align: right;">Page 73</p> <p>1 THE WITNESS: I would think it</p> <p>2 would be a good idea if he knew that</p> <p>3 potentially I could help them. Eventually he</p> <p>4 didn't -- he knew I couldn't help them, so</p> <p>5 what's the point in telling me?</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. And when you say couldn't help them,</p> <p>8 that would be because your request for</p> <p>9 additional federal resources and assets to</p> <p>10 assist with the federal lawful response had</p> <p>11 been denied repeatedly; is that correct?</p> <p>12 A. Yes. It would make more sense that he</p> <p>13 could contact local law enforcement.</p> <p>14 Q. And by doing so, if he contacted local</p> <p>15 law enforcement or state law enforcement,</p> <p>16 that would then be the burden of the state</p> <p>17 law enforcement to then pay for that</p> <p>18 response, that law enforcement response, even</p> <p>19 though the protestors were camping out on</p> <p>20 corps land?</p> <p>21 MR. SCARPATO: Objection, vague,</p> <p>22 and assumes fact not in evidence.</p> <p>23 THE WITNESS: I don't know an</p> <p>24 answer to that. I don't know whose</p> <p>25 responsibility it would be.</p>

71:1-18 611 vague

71:19-72:14 401-402;
611

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Introduces
new material

<p style="text-align: right;">Page 74</p> <p>1 MR. KERLIN: Okay. We're done with</p> <p>2 this exhibit now. Actually, I'm sorry. Is</p> <p>3 there an attachment to this, I believe?</p> <p>4 BY MR. KERLIN:</p> <p>5 Q. This is the press release. Do you ever</p> <p>6 recall seeing this press release about the US</p> <p>7 Army Corps of Engineers granting a special</p> <p>8 use permit?</p> <p>9 A. I don't recall seeing that, no.</p> <p>10 Q. Okay.</p> <p>11 MR. KERLIN: You can go ahead and</p> <p>12 take that down.</p> <p>13 BY MR. KERLIN:</p> <p>14 Q. Do you recall receiving updates from Tom</p> <p>15 Doering and others regarding the protests?</p> <p>16 A. I'm sorry. I didn't hear what you said.</p> <p>17 Receiving what?</p> <p>18 Q. Receiving updates regarding the protests</p> <p>19 from Tom, I believe it's pronounced Doering?</p> <p>20 A. I don't recall if I did or not. I don't</p> <p>21 know.</p> <p>22 Q. Some of the dates we were looking at</p> <p>23 earlier, so we were looking around the -- we</p> <p>24 looked at some documents that were around mid</p> <p>25 to late August, and then September, some of</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Yes.</p> <p>2 Q. This was from James Startzell, it's to</p> <p>3 Keith Fink and then also John Henderson. We</p> <p>4 talked about Mr. Henderson. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Says, thanks, Keith. I'll include some</p> <p>7 of the highlights in the DAPL update on</p> <p>8 Monday. All this information basically</p> <p>9 confirms the commander's assessment that the</p> <p>10 camps are growing out of SRST's control, and</p> <p>11 the chairman is probably going to try to use</p> <p>12 the SUP as a way to regain control of what he</p> <p>13 sees as legitimate protestors.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Were you aware that there were</p> <p>17 protestors that were on corps land that were</p> <p>18 not part of the Standing Rock Sioux tribe?</p> <p>19 A. That's what the intelligence received by</p> <p>20 the command center indicated, yes.</p> <p>21 Q. And by the end of September, do you</p> <p>22 agree with the commander's assessments that</p> <p>23 the camps are growing out of the Standing</p> <p>24 Rock Sioux tribe's control?</p> <p>25 A. It seemed like by the end of September,</p>
<p style="text-align: right;">Page 75</p> <p>1 the emails we were looking at an September</p> <p>2 7th. From that point on, did the protests</p> <p>3 continue to grow in size and intensity?</p> <p>4 A. I know it continued to grow, but I don't</p> <p>5 know the onset date or the ending date when</p> <p>6 the growth came to its maximum. I'm not</p> <p>7 sure.</p> <p>8 Q. Okay. Do you know if after the</p> <p>9 protest -- if after the special use permit</p> <p>10 press release that I showed you, after that</p> <p>11 came out, that the protest then grew</p> <p>12 significantly and quickly?</p> <p>13 MR. SCARPATO: Objection, vague.</p> <p>14 THE WITNESS: I don't know that. I</p> <p>15 knew it grew, but I don't know when it</p> <p>16 started, and I don't know what the cause of</p> <p>17 it was.</p> <p>18 MR. KERLIN: Bring up Exhibit 318,</p> <p>19 please.</p> <p>20 (Exhibit 318 marked)</p> <p>21 BY MR. KERLIN:</p> <p>22 Q. Okay. And this is an email that you're</p> <p>23 not on, but I want to make that clear. The</p> <p>24 date of this is September 25th of 2016. Do</p> <p>25 you see that?</p>	<p style="text-align: right;">Page 77</p> <p>1 it was out of control for everyone.</p> <p>2 Q. Now, with respect to keeping control of</p> <p>3 the protests that were on -- camping on corps</p> <p>4 land, do you understand that US -- strike all</p> <p>5 that.</p> <p>6 Do you understand that the US Army</p> <p>7 Corps of Engineers land is, I mean, that's</p> <p>8 federal land; right? That they're</p> <p>9 responsible for.</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 A. Yeah.</p> <p>13 Q. At this time period in September of</p> <p>14 2016, to your knowledge, did the US Army</p> <p>15 Corps of Engineers or any federal law</p> <p>16 enforcement take any responsibility for what</p> <p>17 was happening on corps land?</p> <p>18 MR. SCARPATO: Objection, vague.</p> <p>19 THE WITNESS: I don't -- no, I</p> <p>20 don't know if anyone did or not.</p> <p>21 BY MR. KERLIN:</p> <p>22 Q. Were there any, to your knowledge, any</p> <p>23 federal law enforcement that went onto corps</p> <p>24 land to try and maintain law and order, to</p> <p>25 try and get the protest back into control?</p>

75:20-76:15
103(d); 602; 611

76:21-
77:1
602, 611
vague;
701/702
expert
test.

77:22-
78:12
602

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77:22-78:12
602; 611

<p style="text-align: right;">Page 78</p> <p>1 MR. SCARPATO: Objection, vague.</p> <p>2 THE WITNESS: I do know that the</p> <p>3 FBI had sent some agents into the protestors'</p> <p>4 site in an undercover capacity in an attempt</p> <p>5 to obtain intelligence.</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. In that activity, was there any other</p> <p>8 type of federal law enforcement activity on</p> <p>9 corps land, that you're aware of?</p> <p>10 MR. SCARPATO: Objection, vague and</p> <p>11 foundation, lack of personal knowledge.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. KERLIN:</p> <p>14 Q. Would you agree with me that in order to</p> <p>15 get control of the protests, that, since this</p> <p>16 was federal land, federal law enforcement</p> <p>17 should have taken some actions to try and</p> <p>18 control the protestors that had grown out of</p> <p>19 control?</p> <p>20 MR. SCARPATO: Objection, vague,</p> <p>21 and calls for a legal conclusion.</p> <p>22 THE WITNESS: Yes. From the very</p> <p>23 onset, when the Corps of Engineers took no</p> <p>24 action allowing them initially to camp on the</p> <p>25 land. And yes, in fact, there was no</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. SCARPATO: Objection, calls for</p> <p>2 an incomplete hypothetical.</p> <p>3 THE WITNESS: Likely not, only due</p> <p>4 to a lack of personnel within the district.</p> <p>5 Like I mentioned before, during a protest</p> <p>6 outside the federal building, I had four or</p> <p>7 five deputies in the building. There's</p> <p>8 nothing four or five could do when you take</p> <p>9 the numbers that were needed for the court</p> <p>10 proceedings and prisoner transportation and</p> <p>11 operations of the district here in Bismarck.</p> <p>12 That would have left me with maybe one or two</p> <p>13 deputies to handle anything. There was</p> <p>14 nothing I could do with one or two deputies.</p> <p>15 I would have to go through the same</p> <p>16 requesting process, is what I'm getting at.</p> <p>17 BY MR. KERLIN:</p> <p>18 Q. If you were provided resources that you</p> <p>19 thought were sufficient, and you were asked</p> <p>20 by the Corps of Engineers to come onto their</p> <p>21 land to help address the protestors, is that</p> <p>22 something that you would done as a federal</p> <p>23 lawful enforcement officer for the District</p> <p>24 of North Dakota?</p> <p>25 MR. SCARPATO: Objection,</p>
<p style="text-align: right;">Page 79</p> <p>1 assistance provided to local law enforcement.</p> <p>2 BY MR. KERLIN:</p> <p>3 Q. Local law enforcement until they're</p> <p>4 invited onto federal land, they're not</p> <p>5 allowed to come onto the corps land to do</p> <p>6 anything with respect to the protestors;</p> <p>7 right?</p> <p>8 MR. SCARPATO: Objection, calls for</p> <p>9 a legal conclusion and lack of foundation and</p> <p>10 misstates the evidence and assumes facts not</p> <p>11 in evidence.</p> <p>12 THE WITNESS: I'm not sure what</p> <p>13 the -- I do know that at one point there was</p> <p>14 some type of checkerboard jurisdiction</p> <p>15 between the sheriff and Bureau of Indian</p> <p>16 Affairs on reservation land. And on federal</p> <p>17 land, I'm not exactly sure what the</p> <p>18 jurisdiction was for the local sheriff on</p> <p>19 federal land that's within his county.</p> <p>20 BY MR. KERLIN:</p> <p>21 Q. Fair enough. If the US Army Corps of</p> <p>22 Engineers had asked you as the US Marshal to</p> <p>23 provide a law enforcement response on US</p> <p>24 Corps of Engineers land, is that something</p> <p>25 that you would have done?</p>	<p style="text-align: right;">Page 81</p> <p>1 incomplete hypothetical.</p> <p>2 THE WITNESS: With the approval of</p> <p>3 the marshal service headquarters and the</p> <p>4 director of the marshal service. He would</p> <p>5 have provided ample deputies and gave the</p> <p>6 approval to it, I certainly would have.</p> <p>7 BY MR. KERLIN:</p> <p>8 Q. Okay. And if it was early on, like when</p> <p>9 we were talking earlier, at the onset of</p> <p>10 these protests, do you think that's something</p> <p>11 that could have been done safely if you were</p> <p>12 provided the resources and made that request?</p> <p>13 MR. SCARPATO: Objection, vague,</p> <p>14 lack of personal knowledge, and calls for a</p> <p>15 legal conclusion, incomplete hypothetical.</p> <p>16 THE WITNESS: Certainly would have</p> <p>17 been a much easier operation, that's for</p> <p>18 sure.</p> <p>19 MR. KERLIN: Okay. Let's -- we've</p> <p>20 been going about another hour. I know</p> <p>21 you're -- can we go off the record for a</p> <p>22 second.</p> <p>23 THE VIDEOGRAPHER: Going off the</p> <p>24 record. The universal coordinated time is</p> <p>25 1629. We are off record.</p>

78:14-79:1
602; 701; 701/702
expert test. and calls
for legal concl.

79:21-81:18
602; 611 incomplete
hypothetical

81:8-18
602;
611
incompl
ete
hypoth
etical;
701/70
2
expert
test.
and
legal
concl.

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<p style="text-align: right;">Page 82</p> <p>1 (Discussion held off record)</p> <p>2 (Lunch recess taken at 10:30 a.m.</p> <p>3 MDT)</p> <p>4 -oOo-</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 84</p> <p>1 legs, the discharged projectile went been the</p> <p>2 legs of two different highway patrolmen, if I</p> <p>3 remember right.</p> <p>4 Q. Yeah.</p> <p>5 MR. KERLIN: Could we bring up</p> <p>6 Exhibit 319.</p> <p>7 (Exhibit 319 marked)</p> <p>8 BY MR. KERLIN:</p> <p>9 Q. Do you see that on your screen?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So the date of this email, so</p> <p>12 it's October 27, 2016, so it's, well, about</p> <p>13 six, seven weeks after some of the emails</p> <p>14 that we were looking at earlier that was</p> <p>15 around September, start of September. Okay?</p> <p>16 Just to put it into context.</p> <p>17 It's a string of emails, and we</p> <p>18 can -- you respond to a part, but I think if</p> <p>19 maybe we go to the end and work our way up,</p> <p>20 we can make sure we have an opportunity for</p> <p>21 you to see the whole thing.</p> <p>22 The bottom email is an email from</p> <p>23 Chris Myers, October 27th. I don't believe</p> <p>24 you're on that one. I will ask you if are</p> <p>25 familiar with the fact that it mentions LE</p>
<p style="text-align: right;">Page 83</p> <p>1 A F T E R N O O N S E S S I O N</p> <p>2 (Proceedings resumed at 11:32 a.m.</p> <p>3 MDT)</p> <p>4 THE VIDEOGRAPHER: We are now back</p> <p>5 on the record. Universal coordinated time is</p> <p>6 1732.</p> <p>7 EXAMINATION (continued)</p> <p>8 BY MR. KERLIN:</p> <p>9 Q. Good afternoon, Mr. Ward. We're back</p> <p>10 after a break. Are you able to continue?</p> <p>11 A. Yes. Should we put the screen back the</p> <p>12 way it was? There you go.</p> <p>13 Q. Okay. I want to talk to you a little</p> <p>14 bit about the DAPL protest, continuing our</p> <p>15 discussion from earlier today. At some point</p> <p>16 did you become aware of violence with the</p> <p>17 protestors?</p> <p>18 A. Yes.</p> <p>19 Q. One instance did you learn that there</p> <p>20 was a gunshot or that there was a law</p> <p>21 enforcement officer that was injured in a</p> <p>22 shooting?</p> <p>23 A. I heard that there was a gunshot, but I</p> <p>24 don't recall that I heard that there was a</p> <p>25 shooting. I thought it went between the</p>	<p style="text-align: right;">Page 85</p> <p>1 has made arrests. No accurate numbers</p> <p>2 available yet. Is that familiar with your</p> <p>3 recollection or consistent with your</p> <p>4 recollection that there was a number of</p> <p>5 arrests that were made of protestors?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Then the email above it is the</p> <p>8 thank you from a Rita Aguilar. I don't think</p> <p>9 you're on that one either. Then the email</p> <p>10 above it is from Clare Hochhalter. Do you</p> <p>11 know who she is?</p> <p>12 A. That's a he. He's a federal magistrate</p> <p>13 judge in Bismarck.</p> <p>14 Q. Thank you for that correction.</p> <p>15 It says, the attached map shows the</p> <p>16 intersection of County 134 and ND 1806, an</p> <p>17 area just north of the Cannonball River,</p> <p>18 which river is the northern boundary of the</p> <p>19 Standing Rock Indian reservation. This is</p> <p>20 generally the area where there is now a</p> <p>21 standoff where shots have been fired.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Then if we go to the email above</p> <p>25 it, there's a question that's asked. Again,</p>

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<p style="text-align: right;">Page 86</p> <p>1 I don't believe you're on either one of</p> <p>2 these, but it says, thanks, Clare. Do you</p> <p>3 know if these shots were fired by protestors</p> <p>4 or LE?</p> <p>5 And then, the one above it, again</p> <p>6 from Mr. -- Magistrate Judge Hochhalter, it</p> <p>7 says, report is that LE did not fire shots.</p> <p>8 Do you see that?</p> <p>9 MR. KERLIN: Below -- I think it's</p> <p>10 the one below that. Next one. Yeah.</p> <p>11 BY MR. KERLIN:</p> <p>12 Q. Then, if we -- the next one says, thank</p> <p>13 you. Please keep us posted. We really</p> <p>14 appreciate it, and everyone, please stay</p> <p>15 safe.</p> <p>16 A. Okay.</p> <p>17 Q. And then above that is your email, which</p> <p>18 you send to Ronald Davis. You said, I need</p> <p>19 to correct this past email. The gunshot</p> <p>20 victim is not deceased but wounded. The</p> <p>21 police officer who initially was thought to</p> <p>22 be grazed in the leg by a gunshot was only</p> <p>23 hit with, apparently, a piece of road</p> <p>24 material after the road was hit with a</p> <p>25 gunshot. Officer has not been shot.</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. SCARPATO: Objection,</p> <p>2 foundation, lack of personal knowledge.</p> <p>3 THE WITNESS: I don't know -- I</p> <p>4 don't know what the initial thought process</p> <p>5 entailed. I just know that I didn't agree</p> <p>6 with it.</p> <p>7 BY MR. KERLIN:</p> <p>8 Q. Didn't agree with sending in the</p> <p>9 undercover officers?</p> <p>10 A. Right. I didn't agree with that.</p> <p>11 Q. And why didn't you agree with that?</p> <p>12 Like, what was your reasoning behind that?</p> <p>13 A. The FBI agents that were sent undercover</p> <p>14 had since returned to Bismarck to man it and</p> <p>15 had approached me in seeking some assistance</p> <p>16 because they didn't feel that them being sent</p> <p>17 down amongst the protestors was the proper</p> <p>18 thing to do without notification to the</p> <p>19 command center and the local leadership,</p> <p>20 consisting of the sheriffs.</p> <p>21 They knew that -- they knew that</p> <p>22 the sheriffs didn't know that they were</p> <p>23 there, which is a bad law enforcement tactic,</p> <p>24 mainly because of the safety of the</p> <p>25 undercover officers. If there has been some</p>
<p style="text-align: right;">Page 87</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And that's -- is that consistent</p> <p>4 with what you were testifying, consistent</p> <p>5 with your recollection with what you said</p> <p>6 earlier that there was a gunshot, but it</p> <p>7 wasn't anyone that got shot?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Is this indicative of some of the</p> <p>10 violence that was being carried on by the</p> <p>11 protestors that were protesting the DAPL</p> <p>12 pipeline?</p> <p>13 MR. SCARPATO: Objection, assumes</p> <p>14 facts not in evidence and vague.</p> <p>15 THE WITNESS: Yes. That was one</p> <p>16 instance.</p> <p>17 BY MR. KERLIN:</p> <p>18 Q. You mentioned earlier that there was an</p> <p>19 FBI -- I'm going to call it an undertaking or</p> <p>20 an effort to send in a couple of agents that</p> <p>21 were undercover to the protest camps on corps</p> <p>22 land. Do you recall that?</p> <p>23 A. Yes.</p> <p>24 Q. What was the law enforcement reason --</p> <p>25 or what was the reason behind doing that?</p>	<p style="text-align: right;">Page 89</p> <p>1 type of emergency response and a raid</p> <p>2 required into the protestors, we being, law</p> <p>3 enforcement on the opposite side, wouldn't</p> <p>4 know that the undercover officers were within</p> <p>5 the protestors, and one of us could have</p> <p>6 gotten hurt.</p> <p>7 Q. Was it accurate that not all of the</p> <p>8 protestors were peaceful that had been</p> <p>9 camping out on corps land?</p> <p>10 A. Yes, that's accurate.</p> <p>11 Q. Do you know who made the decision to</p> <p>12 send the FBI agents undercover?</p> <p>13 A. I was told by those agents who made that</p> <p>14 decision. I don't know that that's factual</p> <p>15 or not, but I'm assuming it is.</p> <p>16 Q. Who did they tell you?</p> <p>17 A. Their supervisor, Jake O'Connell.</p> <p>18 Q. Was there concern that the protestors --</p> <p>19 well, were you aware that the protestors that</p> <p>20 were camping on corps land, in part, were</p> <p>21 from out of state?</p> <p>22 A. Yes, I was aware of that.</p> <p>23 Q. And what --</p> <p>24 A. I understood that they --</p> <p>25 Q. Sorry.</p>

87:24-88:
6
401-402;
602

88:8-89:22
401-402;
602; 802

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90:1-16
401-402; 602; 802

<p style="text-align: right;">Page 90</p> <p>1 A. I understood that they were from various</p> <p>2 parts of the country, if not out of the</p> <p>3 country, but I don't know how much of that</p> <p>4 was factual, but I heard that.</p> <p>5 Q. Was there any concern amongst the law</p> <p>6 enforcement that you were a part of regarding</p> <p>7 the protest that the law enforcement efforts,</p> <p>8 that there were some of these protestors that</p> <p>9 were coming in from out of state had a</p> <p>10 history of violence or anarchy?</p> <p>11 MR. SCARPATO: Objection to form</p> <p>12 and foundation.</p> <p>13 THE WITNESS: There's always that</p> <p>14 concern that anyone may have the potential</p> <p>15 for violence. You always have to be</p> <p>16 concerned about that.</p> <p>17 BY MR. KERLIN:</p> <p>18 Q. Do you know if one of the reasons why</p> <p>19 the FBI agents were sent undercover was</p> <p>20 because of some of the concern of the</p> <p>21 protestors being violent, their propensity</p> <p>22 for violence?</p> <p>23 MR. SCARPATO: Objection, calls for</p> <p>24 speculation.</p> <p>25 THE WITNESS: I have no idea what</p>	<p style="text-align: right;">Page 92</p> <p>1 BY MR. KERLIN:</p> <p>2 Q. The date of this email is November 1st,</p> <p>3 so it's a few weeks, a few days after the</p> <p>4 last email, I guess four, five. It's from</p> <p>5 Terry Van Horn. Are you familiar with Terry?</p> <p>6 A. Yes.</p> <p>7 Q. It says, at least on the signature block</p> <p>8 here, he's the National Security Intelligence</p> <p>9 Specialist, Law Enforcement Coordinator,</p> <p>10 District Security Manager, Public Information</p> <p>11 Officer at the United States Attorney's</p> <p>12 Office. Is that consistent with your</p> <p>13 recollection?</p> <p>14 A. Yes.</p> <p>15 Q. And his email just said, FYI, and it's</p> <p>16 forwarded to Chris Myers, Gary DeLorme, James</p> <p>17 Thomas, and Clare Hochhalter.</p> <p>18 Okay. If we scroll to the message</p> <p>19 that was forwarded, it's dated November 1st,</p> <p>20 and it's from Lynn Woodall from Morton</p> <p>21 County. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. It's sent to Terry Van Horn, a number of</p> <p>24 individuals, Sheriff Laney, Sheriff</p> <p>25 Kirchmeier, and then you are CCed on down the</p>
<p style="text-align: right;">Page 91</p> <p>1 the basis for Jake's decision was. I have no</p> <p>2 idea why he did it.</p> <p>3 BY MR. KERLIN:</p> <p>4 Q. Okay.</p> <p>5 A. I have to assume that Jake's assumption</p> <p>6 was for the betterment of the investigation,</p> <p>7 that he was trying to gather intelligence. I</p> <p>8 don't disagree with that decision. I</p> <p>9 disagree with the fact that the local law</p> <p>10 enforcement wasn't notified that he was going</p> <p>11 to undertake that endeavor.</p> <p>12 Q. No whatever intelligence they gathered</p> <p>13 was ever shared with state law enforcement?</p> <p>14 A. I don't know. I would hope it was, but</p> <p>15 I don't know.</p> <p>16 Q. Were you aware of protestors that killed</p> <p>17 livestock and wildlife?</p> <p>18 MR. SCARPATO: Objection,</p> <p>19 foundation, lack of personal knowledge.</p> <p>20 THE WITNESS: I don't recall that,</p> <p>21 no.</p> <p>22 MR. KERLIN: Could you bring up</p> <p>23 Exhibit 330, please. 320. I'm sorry. 320.</p> <p>24 (Exhibit 320 marked)</p> <p>25</p>	<p style="text-align: right;">Page 93</p> <p>1 page as well. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. This email says, there are two more</p> <p>4 missing buffalo. It says, Ernie and Bev</p> <p>5 Fisher called the TOC at 1820 and stated they</p> <p>6 were missing two more buffalo, that the state</p> <p>7 brand inspector found video. They stated</p> <p>8 that "Josue Rivas Fotographer" posted a video</p> <p>9 on Facebook of two buffalo being butchered.</p> <p>10 I found the video. It clearly shows two</p> <p>11 animals being skinned. If everything goes as</p> <p>12 planned, officials are going to round up the</p> <p>13 herd on the east side of 1806 and transfer</p> <p>14 them to the Solen area. They'll let me know.</p> <p>15 Does this refresh your recollection</p> <p>16 at all about buffalo being killed?</p> <p>17 A. I'm sorry. What's your question again?</p> <p>18 Q. I'm just asking if seeing this email</p> <p>19 that you were CCed on, does it refresh your</p> <p>20 recollection that wildlife or animals were</p> <p>21 being killed by protestors?</p> <p>22 A. Yes. Apparently -- apparently, I was</p> <p>23 aware at the time. You gotta remember, I get</p> <p>24 a lot of emails as the marshal, and I review</p> <p>25 a lot of them and some of them pertain to me,</p>

for completeness
under 106 if objections
above overruled

93:18-94:
2
401-402

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<p style="text-align: right;">Page 94</p> <p>1 some don't. I'm sure I read this, but I just</p> <p>2 didn't recall.</p> <p>3 Q. Okay.</p> <p>4 MR. KERLIN: You can take that</p> <p>5 down, Mr. Diaz.</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. So in addition to the gunshot incident</p> <p>8 that we were talking about, there's been</p> <p>9 animals that had been butchered by the</p> <p>10 protestors. Do you recall any other</p> <p>11 incidents that would be examples of the type</p> <p>12 of violence that specifically come to mind to</p> <p>13 you?</p> <p>14 A. I do recall one incident where the</p> <p>15 protestors were on horseback and charging the</p> <p>16 front line of some troopers who were standing</p> <p>17 still and being charged by protestors on</p> <p>18 horseback.</p> <p>19 I do recall one on incident where</p> <p>20 there was, it appeared, but I don't think --</p> <p>21 it didn't happen, but it appeared that a</p> <p>22 gunshot was, somebody -- they were in, like,</p> <p>23 a water section, a slough of some sort, and I</p> <p>24 don't recall who shot a weapon, but they did</p> <p>25 shoot, and it looked like the other person</p>	<p style="text-align: right;">Page 96</p> <p>1 regarding temporary flight restrictions over</p> <p>2 the DAPL protest sites.</p> <p>3 A. Okay.</p> <p>4 Q. There's your response that's above it.</p> <p>5 That's what I want to focus on next. The</p> <p>6 date of this email is November 4th, and it</p> <p>7 was sent from you to Mr. Brian Throop of the</p> <p>8 FAA, and its subject line is North Dakota TFR</p> <p>9 request.</p> <p>10 Hello, Brian. The justification</p> <p>11 for my support is simply due to officer</p> <p>12 safety. In the recent past, protestors have</p> <p>13 used drones to attempt to crash helicopters</p> <p>14 who were conducting law enforcement missions</p> <p>15 You know better than I what type of damage to</p> <p>16 helicopters and human life would occur if a</p> <p>17 drone hit an occupied helicopter while in</p> <p>18 flight. I do know the pilot and sheriff who</p> <p>19 occupied the helicopter feared for their</p> <p>20 lives when the drone came within</p> <p>21 approximately 50 feet of the helicopter. On</p> <p>22 other occasions the drones have been flown</p> <p>23 within just a few feet of officers' heads and</p> <p>24 within a few feet of vehicles occupied by law</p> <p>25 enforcement. Continuous law enforcement air</p>
<p style="text-align: right;">Page 95</p> <p>1 dropped, like it shot them and killed them</p> <p>2 dead, but, as it turned out, it wasn't as it</p> <p>3 appeared. Apparently the guy fell over or</p> <p>4 dropped to avoid being shot, and the bullet</p> <p>5 missed him. So I do recall seeing that, but</p> <p>6 I don't recall who it was that did the</p> <p>7 shooting.</p> <p>8 MR. KERLIN: Would you bring up</p> <p>9 Exhibit 321.</p> <p>10 (Exhibit 321 marked)</p> <p>11 BY MR. KERLIN:</p> <p>12 Q. This is another string of emails, and if</p> <p>13 we can start at the bottom and then work our</p> <p>14 way up so we kind of have it in the</p> <p>15 appropriate timeline.</p> <p>16 This involved a situation where the</p> <p>17 FAA got involved about temporary flight</p> <p>18 restrictions as a result of the protests. Do</p> <p>19 you recall that occurring?</p> <p>20 A. I don't really recall. Like I said, a</p> <p>21 long time.</p> <p>22 Q. Sure.</p> <p>23 A. But, apparently, it happened.</p> <p>24 Q. The first is, this initial email</p> <p>25 November 4th to some individuals at the FAA</p>	<p style="text-align: right;">Page 97</p> <p>1 surveillance needs to be conducted to ensure</p> <p>2 officer and public safety, including the</p> <p>3 safety of protestors. With that in mind, I</p> <p>4 request you approve the flight restrictions</p> <p>5 to ensure safety for all involved.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you -- do you recall having</p> <p>9 sent this email?</p> <p>10 A. Not specifically sending it, but I do</p> <p>11 recall the topic.</p> <p>12 Q. Okay. And it mentions -- you mention in</p> <p>13 the email that there were these attempts by</p> <p>14 protestors, so they were trying to take</p> <p>15 drones and fly them into law enforcement</p> <p>16 vehicles and aircraft?</p> <p>17 A. Yes.</p> <p>18 Q. But, I mean, was law enforcement doing</p> <p>19 anything to prevent that response?</p> <p>20 A. I think what they did, the best they</p> <p>21 could, was try to avoid them.</p> <p>22 Q. And then you mentioned, you said, I do</p> <p>23 know the pilot and sheriff. Do you know</p> <p>24 which sheriff that is?</p> <p>25 A. It was probably the sheriff of Morton</p>

94:19-95:7
602

96:4-
97:17
602;
802

95:9-96:3 401-402

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<p style="text-align: right;">Page 98</p> <p>1 County. Or Sheriff Laney from Cass County.</p> <p>2 Q. Okay. Then, in addition to flying them</p> <p>3 into vehicles, that they've flown within a</p> <p>4 few feet of the officers' heads, I guess</p> <p>5 while the officers are trying to do law</p> <p>6 enforcement activities?</p> <p>7 A. Yes.</p> <p>8 Q. Then if we go to the response you</p> <p>9 received from the FAA, Mr. Throop sends you a</p> <p>10 response and says -- I'll wait till it's</p> <p>11 brought up. Thank you, sir. I appreciate</p> <p>12 your candor and insight. I do have one quick</p> <p>13 follow-on question. Not to split hairs, but</p> <p>14 in your professional judgment, is there an</p> <p>15 ongoing threat that individuals will continue</p> <p>16 to use unmanned aircraft in a manner that</p> <p>17 threatens law enforcement personnel and</p> <p>18 aircraft?</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Your response --</p> <p>22 MR. KERLIN: Go on up next.</p> <p>23 BY MR. KERLIN:</p> <p>24 Q. It says, yes, and this is November 4th,</p> <p>25 2016, still the same day, yes, without a</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. And the next one says, gathered</p> <p>2 intelligence indicates more protestors and</p> <p>3 more violent acts are to come. Do you recall</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. The last sentence you state, we as law</p> <p>7 enforcement do not see an end to the violent</p> <p>8 acts in the near future.</p> <p>9 Is that consistent with your</p> <p>10 recollection in November of 2016 that that</p> <p>11 was what you and law enforcement thought?</p> <p>12 MR. SCARPATO: Objection, vague.</p> <p>13 THE WITNESS: That's what we</p> <p>14 thought at the time.</p> <p>15 BY MR. KERLIN:</p> <p>16 Q. Okay. And, actually, the protest didn't</p> <p>17 end for significantly longer and even after</p> <p>18 your retirement; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then you shared the email chain, you</p> <p>21 go to the top message, email from you to</p> <p>22 Sheriff Kirchmeier. You state, this is the</p> <p>23 chain of messages I sent to FAA regarding</p> <p>24 flight restrictions. I had a long</p> <p>25 conversation as well prior to the emails.</p>
<p style="text-align: right;">Page 99</p> <p>1 doubt, this is ongoing.</p> <p>2 Is that your recollection is that</p> <p>3 at that time, on November 4th, there was an</p> <p>4 ongoing threat to law enforcement personnel</p> <p>5 and aircraft, that unmanned aircraft would</p> <p>6 continue to be used in that manner?</p> <p>7 A. Yes.</p> <p>8 Q. In your next sentence it says, it has</p> <p>9 gotten progressively worse for about three</p> <p>10 months.</p> <p>11 November 4th, so if we're looking</p> <p>12 back three months, we're talking about the</p> <p>13 start of August; right? August, September.</p> <p>14 Okay?</p> <p>15 A. Yes.</p> <p>16 Q. You said protestors have gotten more and</p> <p>17 more desperate and more violent. Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Is that consistent with your</p> <p>21 recollection that the protestors had gotten</p> <p>22 more desperate and more violent as time went</p> <p>23 on?</p> <p>24 A. Yes, that's what would have been relayed</p> <p>25 to me by the command center.</p>	<p style="text-align: right;">Page 101</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So in addition to the emails you</p> <p>4 sent, do you recall having a conversation</p> <p>5 with FAA about flight restrictions?</p> <p>6 A. I don't recall the conversation or</p> <p>7 having it, but apparently I did.</p> <p>8 Q. And why did you share the information</p> <p>9 with Sheriff Kirchmeier?</p> <p>10 A. It likely, like I said before, was as a</p> <p>11 result of having a discussion with the</p> <p>12 sheriff either Kyle or Paul Laney.</p> <p>13 Apparently it was Kyle. And sharing, as a</p> <p>14 result of a conversation, sharing the</p> <p>15 information I learned through an email chain.</p> <p>16 MR. KERLIN: Go to the next one,</p> <p>17 please. It's 322.</p> <p>18 (Exhibit 322 marked)</p> <p>19 BY MR. KERLIN:</p> <p>20 Q. This email is, begins, email chain</p> <p>21 consists of two emails, two messages.</p> <p>22 Initial email is from Mr. Throop about</p> <p>23 reissuing the TFR, which I understand to be</p> <p>24 temporary flight restriction. Do you see</p> <p>25 that?</p>

98:2-7
602

100:1-5
602;
802

100:5-14
602; 611

99:2-25
602

99:24-25
802

101:20-
102:21
401-402
; 611

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<p style="text-align: right;">Page 102</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And then they limited the -- it</p> <p>3 says, it is basically the same size and scope</p> <p>4 as before, so they're limiting what the</p> <p>5 flight restrictions are and that they're</p> <p>6 going to be in effect until the 15th.</p> <p>7 Do you see that?</p> <p>8 A. Can you point that out again.</p> <p>9 Q. Sure. It's in the bottom email.</p> <p>10 A. Okay. Okay. Yes.</p> <p>11 Q. You responded to him, first of all,</p> <p>12 thank you so much for considering our needs</p> <p>13 and safety of law enforcement. It means so</p> <p>14 much to us. Can you inform why there is a</p> <p>15 deadline, and what are the conditions you</p> <p>16 referenced.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And then you forwarded that,</p> <p>20 again, to Sheriff Kirchmeier?</p> <p>21 A. Yes.</p> <p>22 MR. KERLIN: Go to the next</p> <p>23 exhibit, and it's 323, for the record.</p> <p>24 (Exhibit 323 marked)</p> <p>25</p>	<p style="text-align: right;">Page 104</p> <p>1 as an olive branch for legitimate protestors</p> <p>2 who want to document their own activities.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Were you involved with any of the</p> <p>6 discussions that might have occurred at the</p> <p>7 command center with the Department of</p> <p>8 Homeland Security for North Dakota about</p> <p>9 extending an olive branch to the legitimate</p> <p>10 protestors in this regard?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Okay. Would you agree with me that it's</p> <p>13 an effort to de-escalate things?</p> <p>14 A. Seemed to be, yes.</p> <p>15 Q. And then at the top of this email, this,</p> <p>16 again, is something that you forwarded to</p> <p>17 Sheriff Kirchmeier.</p> <p>18 A. Yes.</p> <p>19 Q. And is this indicative, you know, we've</p> <p>20 seen a couple of emails here, the last couple</p> <p>21 of exhibits where you forwarded information</p> <p>22 to Sheriff Kirchmeier. Is that indicative of</p> <p>23 the type of relationship that you all had</p> <p>24 with respect to sharing this information</p> <p>25 during this protest time period?</p>
<p style="text-align: right;">Page 103</p> <p>1 BY MR. KERLIN:</p> <p>2 Q. This is picking up where the last email</p> <p>3 left off. If we look at the bottom email on</p> <p>4 this page, the one where you had said, first</p> <p>5 of all, thank you for considering the safety</p> <p>6 and needs -- needs and safety -- and the</p> <p>7 safety of law enforcement.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. I want to go to the response from</p> <p>11 FAA.</p> <p>12 This is a response from FAA</p> <p>13 November 4th. It says, no problem at all.</p> <p>14 And he explains that this particular type of</p> <p>15 TFR does require a published begin/end date,</p> <p>16 and explains the T is for temporary, or</p> <p>17 that's what he's been informed.</p> <p>18 If we go the last paragraph, it</p> <p>19 says, the protestors will also be allowed to</p> <p>20 fly drones in the air directly over their</p> <p>21 camp.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it says, the North Dakota Department</p> <p>25 of Homeland Security actually asked for that</p>	<p style="text-align: right;">Page 105</p> <p>1 A. I think, because of the relationship we</p> <p>2 had in sharing information, not just during</p> <p>3 the protest time period, but any time.</p> <p>4 MR. KERLIN: Let's go the next</p> <p>5 exhibit. All right. This should be Exhibit</p> <p>6 324. We'll mark it your next exhibit.</p> <p>7 Sorry.</p> <p>8 (Exhibit 324 marked)</p> <p>9 BY MR. KERLIN:</p> <p>10 Q. So we're just a couple days past the</p> <p>11 last email, so this is November 7th of 2016.</p> <p>12 There's an email from Chris Myers, and it</p> <p>13 goes out to a long list of individuals, some</p> <p>14 of which are with the state, some of which</p> <p>15 are with the federal government. And he</p> <p>16 says, with the recent developments in</p> <p>17 escalating violent criminal activity, I</p> <p>18 propose an investigation/prosecution</p> <p>19 coordination meeting to increase efficiency</p> <p>20 and effectiveness of our investigators and</p> <p>21 subsequent prosecution.</p> <p>22 Do you recall attending a meeting</p> <p>23 regarding investigation and prosecution</p> <p>24 coordination because of the recent</p> <p>25 development and escalating violent criminal</p>

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<p>Page 106</p> <p>1 activity of the protestors?</p> <p>2 A. I don't recall if I did or not.</p> <p>3 Q. And then Mr. Myers forwarded that to you</p> <p>4 and mentioned that he forgot to copy you on</p> <p>5 it, feel free to attend or send someone else.</p> <p>6 You don't recall whether you attended that?</p> <p>7 A. No, I don't.</p> <p>8 MR. KERLIN: If you go to Exhibit</p> <p>9 325.</p> <p>10 (Exhibit 325 marked)</p> <p>11 BY MR. KERLIN:</p> <p>12 Q. This is a document, it's dated November</p> <p>13 10th, 2016. Looks like it might be some type</p> <p>14 of a calendar invite or an invite for a</p> <p>15 conference call, and if we go to the required</p> <p>16 attendees on the first line, it has you there</p> <p>17 at the end of the first line, Paul Ward.</p> <p>18 MR. KERLIN: All right. Let me go</p> <p>19 to the next page so we can get the whole</p> <p>20 context of it. Before we do, I was just</p> <p>21 going to let him read that page and then go</p> <p>22 to the next page.</p> <p>23 THE WITNESS: Can't read that very</p> <p>24 good.</p> <p>25 MR. KERLIN: Yeah. Let's make that</p>	<p>Page 108</p> <p>1 situation and long-term response needs.</p> <p>2 Thank you for helping to set this up.</p> <p>3 Call-in information, and provides the call-in</p> <p>4 information.</p> <p>5 Mr. Ward, do you recall attending</p> <p>6 kind of all-hands-on-deck call like this that</p> <p>7 occurred?</p> <p>8 A. I don't, no.</p> <p>9 Q. Okay. Did you have an understanding,</p> <p>10 especially by November of 2016, that North</p> <p>11 Dakota state law enforcement was trying to</p> <p>12 mobilize law enforcement across the entire</p> <p>13 state to help with the necessary law</p> <p>14 enforcement response to the DAPL protestors?</p> <p>15 A. Yes. And I -- my recollection, I</p> <p>16 thought it was long before November.</p> <p>17 Q. Oh, absolutely, early on it required an</p> <p>18 almost an all-state, you know, send every</p> <p>19 available person that you can spare to help</p> <p>20 type of ask that went out for the state and</p> <p>21 then for neighboring states as well, they</p> <p>22 have offered.</p> <p>23 A. Yes.</p> <p>24 Q. National guard.</p> <p>25 MR. SCARPATO: Misstates the</p>
<p>Page 107</p> <p>1 a little larger. There we go.</p> <p>2 BY MR. KERLIN:</p> <p>3 Q. Hello, all. Sheriff Kirchmeier and DES</p> <p>4 would like to hold a conference call for all</p> <p>5 the sheriffs and chiefs in North Dakota to</p> <p>6 update us all on the protests and discuss the</p> <p>7 needs and plans for the next phase. If at</p> <p>8 all possible, please call in for this update.</p> <p>9 Conference call and information is listed</p> <p>10 below in the email from Sean Johnson. I have</p> <p>11 included US Attorney Chris Myers, US Marshal</p> <p>12 Ward, and BCI Director Carlson on the call as</p> <p>13 they have stood by us through this long</p> <p>14 incident. Mike, could you please forward</p> <p>15 this to the chiefs.</p> <p>16 MR. KERLIN: You can take that</p> <p>17 down. We'll go to the next page.</p> <p>18 BY MR. KERLIN:</p> <p>19 Q. This is what was forwarded, and it's</p> <p>20 Sean Johnson, Sheriff Laney, below is call-in</p> <p>21 information for the sheriffs and police</p> <p>22 chiefs all call being hosted by Sheriff</p> <p>23 Kirchmeier, Director Wilz. We are hoping as</p> <p>24 many sheriffs and chiefs can join us as</p> <p>25 possible to discuss the current DAPL protest</p>	<p>Page 109</p> <p>1 evidence, not in evidence.</p> <p>2 BY MR. KERLIN:</p> <p>3 Q. Were you aware that the national guard</p> <p>4 was mobilized for North Dakota to try and</p> <p>5 assist with the law enforcement response?</p> <p>6 A. Yes.</p> <p>7 Q. Throughout the time period where North</p> <p>8 Dakota is reaching out to all available law</p> <p>9 enforcement that are available in the state,</p> <p>10 asking other states to send assistance and</p> <p>11 law enforcement, mobilizing the national</p> <p>12 guard for the state was during this time</p> <p>13 period when you were asking for federal law</p> <p>14 enforcement support?</p> <p>15 A. I was asking for federal law enforcement</p> <p>16 assistance throughout this whole process. It</p> <p>17 never -- right up until I retired.</p> <p>18 Q. And during this whole time, the entire</p> <p>19 State of North Dakota is trying to mobilize</p> <p>20 everything they can to deal with this</p> <p>21 situation that was created on corps land and</p> <p>22 that has now grown and grown and become more</p> <p>23 violent. And on the federal side you're</p> <p>24 asking; correct? You're trying to get</p> <p>25 assistance, and you're not provided any;</p>

106:12-108:8 602; 611

108:9-23
602

109:7-17 401-402

109:18-
111:10
602; 611
vague,
compound,
assumes
facts not
in
evidence

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109:18-111:10
401-402; 602; 611
vague, compound,
assumes facts not in
evidence

<p>Page 110</p> <p>1 correct?</p> <p>2 MR. SCARPATO: Objection, vague,</p> <p>3 compound, assumes facts not in evidence, and</p> <p>4 mischaracterizes the evidence, foundation.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: Yes, that's correct.</p> <p>7 I didn't --</p> <p>8 BY MR. KERLIN:</p> <p>9 Q. And so on one side we have an entire</p> <p>10 state trying to do everything they can to</p> <p>11 help deal with this protest that's being</p> <p>12 encamped on federal land, and the federal</p> <p>13 response, even when made by -- request made</p> <p>14 by US Marshal for the District of North</p> <p>15 Dakota, is they're nonexistent; is that</p> <p>16 right?</p> <p>17 MR. SCARPATO: Objection, vague,</p> <p>18 compound, foundation, misstates the fact,</p> <p>19 assumes facts not in evidence.</p> <p>20 THE WITNESS: The response was</p> <p>21 nonexistent.</p> <p>22 BY MR. KERLIN:</p> <p>23 Q. And so --</p> <p>24 A. I got --</p> <p>25 Q. -- North Dakota bore that entire</p>	<p>Page 112</p> <p>1 and he forwarded that email. And then if we</p> <p>2 go down to what he forwarded, there's an</p> <p>3 email from Terry Van Horn that says, this is</p> <p>4 what COE was talking about this morning at</p> <p>5 the SEOC briefing.</p> <p>6 MR. KERLIN: I want to turn to the</p> <p>7 next page.</p> <p>8 BY MR. KERLIN:</p> <p>9 Q. There's two emails here. We start at</p> <p>10 the bottom, dated Monday, November 14th, and</p> <p>11 it says, COE granted permission for the</p> <p>12 Standing Rock to pray. During the morning</p> <p>13 briefing at the SEOC, COE announced that the</p> <p>14 COE granted permission for Standing Rock to</p> <p>15 pray just east of the DAPL drill pad on COE</p> <p>16 land tomorrow. COE advised that COE would</p> <p>17 have to coordinate with the TOC and law</p> <p>18 enforcement for an escort through the TCP at</p> <p>19 the FOB to be escorted to the prayer site.</p> <p>20 Sheriff K spontaneously responded, no, not</p> <p>21 going to happen. COE then immediately sat</p> <p>22 down.</p> <p>23 Do you know what COE stands for?</p> <p>24 A. There's a lot of acronyms in that email</p> <p>25 that I don't have a clue what they stand for.</p>
<p>Page 111</p> <p>1 responsibility by themselves without federal</p> <p>2 assistance and without federal enforcement</p> <p>3 support to deal with what was created and had</p> <p>4 grown on federal land that was controlled by</p> <p>5 the US Army Corps of Engineers; is that</p> <p>6 correct?</p> <p>7 MR. SCARPATO: Objection, vague,</p> <p>8 compound, foundation, mischaracterizes the</p> <p>9 evidence, assumes facts not in evidence.</p> <p>10 THE WITNESS: Yes, that's true.</p> <p>11 MR. KERLIN: All right. I'd like</p> <p>12 to turn to the next exhibit we have, which is</p> <p>13 326.</p> <p>14 (Exhibit 326 marked)</p> <p>15 BY MR. KERLIN:</p> <p>16 Q. At some point, Mr. Ward, did you become</p> <p>17 aware of a request for there to be some type</p> <p>18 of prayer meeting or prayer vigil that was</p> <p>19 gonna take place?</p> <p>20 A. I don't know. I don't recall that.</p> <p>21 Could have been, but I don't know.</p> <p>22 Q. If we go down, this is another email</p> <p>23 that you're on first page, you're CCed on</p> <p>24 this email. You see at the top it's dated</p> <p>25 November 14th of 2016. Sent by James Thomas,</p>	<p>Page 113</p> <p>1 But, no, I don't know.</p> <p>2 Q. Okay. Fair enough.</p> <p>3 MR. KERLIN: Let me go the next</p> <p>4 exhibit, 327, and I think you'll have a</p> <p>5 little bit more explanation if I put some of</p> <p>6 this in context.</p> <p>7 (Exhibit 327 marked)</p> <p>8 BY MR. KERLIN:</p> <p>9 Q. This email is dated November 14th, 2016</p> <p>10 It's from Mr. Thomas, and it has you CCed on</p> <p>11 it as well. It says, the Morton County's</p> <p>12 Sheriff's Department/Unified Command has</p> <p>13 communicated to the United States Marshal</p> <p>14 Service and asked us to communicate to you</p> <p>15 that Morton County Sheriff's</p> <p>16 Department/Unified Command does not have the</p> <p>17 resources to maintain the safety of</p> <p>18 participants or law enforcement in the</p> <p>19 proposed day of action event on corps land</p> <p>20 east of the Dakota Access drill pad. Morton</p> <p>21 County Sheriff's Department/Unified Command</p> <p>22 will not support such an event and will not</p> <p>23 provide an escort for protestors' ingress or</p> <p>24 egress for the corps land in question.</p> <p>25 Also, Dakota Access has</p>

111:16-113:6
401-402; 602; 611

113:9-
115:2
401-402;
602; 611

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113:9-115:2
401-402; 602;
611

<p style="text-align: right;">Page 114</p> <p>1 communicated with Morton County Sheriff's</p> <p>2 Department/Unified Command which relayed</p> <p>3 that -- which relayed that United States</p> <p>4 Marshal's Service, that Dakota Access did not</p> <p>5 agree to allow protestors access across its</p> <p>6 Cannonball Ranch property to reach corps</p> <p>7 land, and no approval of access is</p> <p>8 forthcoming for this event. Please</p> <p>9 communicate this to the necessary personnel.</p> <p>10 I would be happy to put you in touch with</p> <p>11 leadership at Morton County Sheriff's</p> <p>12 Office -- Sheriff's Department/Unified</p> <p>13 Command. If you would like additional</p> <p>14 information, I do not know the sheriff -- I</p> <p>15 do not know the sheriff -- I do know the</p> <p>16 sheriff is currently engaged in multiple</p> <p>17 protest events occurring in various</p> <p>18 locations. I can get you contact information</p> <p>19 for Dakota Access if needed.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And do you recall if there was</p> <p>23 any request to try and egress through other</p> <p>24 means to reach the corps land for a type of</p> <p>25 prayer ceremony?</p>	<p style="text-align: right;">Page 116</p> <p>1 just drawn a blank on this issue.</p> <p>2 Q. Okay. All right.</p> <p>3 MR. KERLIN: Let's go to Exhibit</p> <p>4 331.</p> <p>5 (Exhibit 331 marked)</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. This is an email that you sent</p> <p>8 responding to Mr. Voeller.</p> <p>9 MR. KERLIN: Let's go to the bo</p> <p>10 so we can see the rest of the email chain.</p> <p>11 I'm sorry. So he'll know what it's in</p> <p>12 response to.</p> <p>13 BY MR. KERLIN:</p> <p>14 Q. So the one that we just discussed is</p> <p>15 this one above it, sir, the corp is going to</p> <p>16 allow a prayer ceremony to take place. That</p> <p>17 was what we just discussed. That was the</p> <p>18 prior email.</p> <p>19 A. Okay.</p> <p>20 Q. All right. Then you respond, dated</p> <p>21 Monday, November 14th, from you to</p> <p>22 Mr. Voeller at the US Army Corps -- or,</p> <p>23 excuse me -- yeah, US Army Corps, you said,</p> <p>24 with all due respect, this is disappointing,</p> <p>25 to say the least. You have just allowed</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Apparently there was, according to that,</p> <p>2 but I don't -- I don't recall it.</p> <p>3 MR. KERLIN: Okay. Go to the next</p> <p>4 document, please. You can skip to 328.</p> <p>5 (Exhibit 328 marked)</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. For this one at the top it says, sir --</p> <p>8 so this is from John Voeller, and he's CCing</p> <p>9 you as well but directing it to Mr. Thomas.</p> <p>10 Sir, the corps is going to allow a prayer</p> <p>11 ceremony to take place tomorrow on the USACE</p> <p>12 property to the east of the drill pad.</p> <p>13 Individuals will be accessing the area by</p> <p>14 boat instead of land. Major Startzell will</p> <p>15 be notifying Sheriff Kirchmeier of this.</p> <p>16 There will be three USACE personnel escorting</p> <p>17 the group into the site for the ceremony.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Do you recall at all a boat being</p> <p>21 allowed to go up the river to where the</p> <p>22 prayer ceremony was going to take place on</p> <p>23 corps land?</p> <p>24 A. I recall something about the boat being</p> <p>25 used, but, like I said, the whole issue, I've</p>	<p style="text-align: right;">Page 117</p> <p>1 protestors behind all law enforcement</p> <p>2 defenses. I disagree wholeheartedly, and I</p> <p>3 am amazed that no one at the corps agrees</p> <p>4 with law enforcement.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Does that refresh your recollection at</p> <p>8 all about your disagreement with what the</p> <p>9 corps was allowing protestors to do and go</p> <p>10 behind all law enforcement defenses?</p> <p>11 A. Yes, like I said, I just don't -- I just</p> <p>12 didn't recollect what the issue was about,</p> <p>13 but reading this, I understand that I wrote</p> <p>14 that, and I agree with it and all, and I</p> <p>15 agree with what I wrote then.</p> <p>16 Q. And can you tell me about why you were</p> <p>17 disappointed with this and that you disagreed</p> <p>18 with what was being allowed to be done.</p> <p>19 A. Well, apparently -- apparently, they</p> <p>20 wanted the -- allowing the permit to allow</p> <p>21 them to protest and congregate and pray or</p> <p>22 whatever they wanted to without us having any</p> <p>23 control of the situation, of the scene, of</p> <p>24 having them behind our defenses just isn't a</p> <p>25 good tactical thing to do. Puts law</p>

115:7-116:2
401-402; 602; 611

116:7-
117:15
401-402;
602; 611

117:16-
118:15
401-402,
602; 611

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<p style="text-align: right;">Page 118</p> <p>1 enforcement at risk.</p> <p>2 Q. Do you recall if you got any type of a</p> <p>3 response or a phone call, or is there anyone</p> <p>4 that raised any, you know, that your email</p> <p>5 raised concerns for the corps and that the</p> <p>6 corps would change course or consider what</p> <p>7 law enforcement was saying on this issue?</p> <p>8 A. I don't recall if I -- to be honest with</p> <p>9 you, I don't recall sending this email until</p> <p>10 you showed it to me. So I don't recall at</p> <p>11 all if there was any response.</p> <p>12 Q. As you sit here today, you do recall</p> <p>13 this email, and you stand behind your</p> <p>14 decision, having seen it now; is that fair?</p> <p>15 A. Yes.</p> <p>16 MR. KERLIN: Okay. You can take</p> <p>17 that down.</p> <p>18 I'd like to bring up the next</p> <p>19 exhibit, which is 332.</p> <p>20 (Exhibit 332 marked)</p> <p>21 BY MR. KERLIN:</p> <p>22 Q. I want to say this is another email</p> <p>23 that's been forwarded, so I want to go to the</p> <p>24 end and work our way backwards. Or work our</p> <p>25 way forward through time, is a better way to</p>	<p style="text-align: right;">Page 120</p> <p>1 feel the OGC opinion was wrong, I have</p> <p>2 attached a significant incident report. In</p> <p>3 the report, the DUSM shot an active shooter.</p> <p>4 This assumable within a high school. This</p> <p>5 goes exactly to what I was saying. He had a</p> <p>6 duty to respond, and he did, doing the right</p> <p>7 thing. I don't see the federal nexus OGC</p> <p>8 referred to.</p> <p>9 Again, I don't want to get into</p> <p>10 OGC, I just want to get into your</p> <p>11 communication with Mr. Snelson. Do you</p> <p>12 recall why you sent this to him?</p> <p>13 A. Was that a question?</p> <p>14 Q. Yes. Why did you forward this</p> <p>15 incident -- I guess you get these incident</p> <p>16 notifications as a US Marshal that go out</p> <p>17 when things happen that, I guess, involves</p> <p>18 the marshal service, and you forwarded that</p> <p>19 to Mr. Snelson. Why did you do that?</p> <p>20 A. It was indicative of what marshal</p> <p>21 service has done in recent past and</p> <p>22 historically since the onset of the marshal</p> <p>23 service. It would be the federal law</p> <p>24 enforcement agency to assist local law</p> <p>25 enforcement, if and when they're needed.</p>
<p style="text-align: right;">Page 119</p> <p>1 say it.</p> <p>2 So the first is an incident</p> <p>3 notification dated September 8th of 2016, and</p> <p>4 it talks about DUSM responded to active</p> <p>5 shooter at HS. DUSM shot and wounded active</p> <p>6 shooter.</p> <p>7 What is -- do you know what DUSM</p> <p>8 stands for?</p> <p>9 A. Deputy United States Marshal.</p> <p>10 Q. And then you forwarded this.</p> <p>11 MR. KERLIN: If we go up to the</p> <p>12 next, the next thing above it; right.</p> <p>13 BY MR. KERLIN:</p> <p>14 Q. So it's forwarded from you to William</p> <p>15 Snelson. Who is William Snelson?</p> <p>16 A. Well, apparently, he's somebody with the</p> <p>17 marshal service. I don't know. I don't</p> <p>18 know.</p> <p>19 Q. I can see on my copy right above it says</p> <p>20 he's Associate Director for Operations at the</p> <p>21 United States Marshal Service.</p> <p>22 A. Okay.</p> <p>23 Q. And you say, Bill, thank you for</p> <p>24 speaking with me this morning and for your</p> <p>25 continued support. As an example of why I</p>	<p style="text-align: right;">Page 121</p> <p>1 Apparently, in this situation, a deputy US</p> <p>2 Marshal responded to a high school school</p> <p>3 shooting in assistance of local law</p> <p>4 enforcement because he was the closest or</p> <p>5 nearby. When I had spoke to OGC, they had</p> <p>6 told me that we didn't have a federal nexus</p> <p>7 in this situation.</p> <p>8 MR. SCARPATO: Mr. Ward, I'm going</p> <p>9 to step in and ask you not to divulge</p> <p>10 communications that you had with OGC. If you</p> <p>11 can answer the question fairly and truthfully</p> <p>12 without reference to those communications,</p> <p>13 you can go ahead. Thank you.</p> <p>14 THE WITNESS: Okay. What I was</p> <p>15 trying to explain to Bill was our situation</p> <p>16 in North Dakota was exactly the same as the</p> <p>17 situation listed in the significant interest</p> <p>18 report where the deputy responded to help</p> <p>19 local law enforcement just because the only</p> <p>20 difference was his assistance was required in</p> <p>21 a situation that was fluid at the time, that</p> <p>22 immediately happened, involved preparation,</p> <p>23 where ours, you could prepare for it and</p> <p>24 still provide the assistance. But the</p> <p>25 assistance is what was needed. And the</p>

118:22-121:7
401-402

121:14-
122:2
401-402;
602;
701/702
calls for
legal
concl.
and
expert
testimon
y

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123:23-124:22
401-402

121:14-122:2
401-402; 602;
701/702 calls for
legal concl.

122:7-123:22
401-402; 611

<p>Page 122</p> <p>1 declination of the assistance is one I never</p> <p>2 understood, and I don't understand today.</p> <p>3 MR. KERLIN: Go to the next. So</p> <p>4 then I just want to go -- even if you just</p> <p>5 want to zoom in on the dates here.</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. So then we have September 8th, 2016, so</p> <p>8 shortly after you sent that, hey, Marshal, I</p> <p>9 contacted DOJ today, but I have not heard</p> <p>10 back yet. Have a good night.</p> <p>11 MR. KERLIN: Then we go to the next</p> <p>12 one above it.</p> <p>13 BY MR. KERLIN:</p> <p>14 Q. And so there's a follow-up from you. We</p> <p>15 have to go to the previous page to see the</p> <p>16 start of it. So now we're -- it's now</p> <p>17 October 25th, and then you say, good morning,</p> <p>18 Bill. Below is a message that I sent you in</p> <p>19 September regarding providing support to</p> <p>20 locals. Am not good with computers, but I</p> <p>21 don't think I received your response yet. My</p> <p>22 message today is the same. The locals are in</p> <p>23 need of SOG assistance in regards to the</p> <p>24 major ops plan starting this week. An</p> <p>25 extraction team is needed for emergencies.</p>	<p>Page 124</p> <p>1 this as well, on the CC. You say,</p> <p>2 Mr. Snelson, I am sending this message with</p> <p>3 the utmost urgency. Local law enforcement in</p> <p>4 ND is about to be overrun at the protest site</p> <p>5 located at the DAPL pipeline. I have been</p> <p>6 informed by the sheriff that approximately</p> <p>7 400 protestors have breached barricades and</p> <p>8 are advancing on law enforcement. A</p> <p>9 statewide request for all assistance has gone</p> <p>10 out, and the US Attorney has sent requests to</p> <p>11 DC requesting any and all available federal</p> <p>12 assistance. All available state resources</p> <p>13 from ND and surrounding states have been</p> <p>14 exhausted, and, at this point, we are</p> <p>15 severely outnumbered. Please consider</p> <p>16 providing manpower to assist. Politics</p> <p>17 aside, lives are at stake. Thank you, Paul</p> <p>18 Ward.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall making this request?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell me why you included, in the</p> <p>24 first sentence you said, I am sending this</p> <p>25 message with the utmost urgency. Why did you</p>
<p>Page 123</p> <p>1 Can you advise me if we can do anything to</p> <p>2 assist.</p> <p>3 MR. KERLIN: And if we go to the</p> <p>4 response.</p> <p>5 BY MR. KERLIN:</p> <p>6 Q. Do you recall making that follow-up</p> <p>7 request that I just read you?</p> <p>8 A. I don't recall, but, apparently, I did.</p> <p>9 Q. But it's consistent with what you were</p> <p>10 saying earlier, isn't it, that you made</p> <p>11 repeated requests for assistance; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Then there's the October -- so we get --</p> <p>14 you did get a response from Mr. Snelson,</p> <p>15 Marshal Ward, I apologize for not responding</p> <p>16 directly to you. You know, it says in the</p> <p>17 second paragraph, it says the message that</p> <p>18 you gathered that it's being denied?</p> <p>19 A. Yes.</p> <p>20 MR. KERLIN: I want to go to the</p> <p>21 email at the top.</p> <p>22 BY MR. KERLIN:</p> <p>23 Q. So now it's November 20th of 2016, and</p> <p>24 you send an email to Mr. Snelson, among some</p> <p>25 others, and you include Sheriff Kirchmeier on</p>	<p>Page 125</p> <p>1 say utmost urgency?</p> <p>2 A. It was an urgent situation. Law</p> <p>3 enforcement was at risk. Potential for</p> <p>4 violence was high.</p> <p>5 Q. Do you stand by your statements that I</p> <p>6 read to you in your email, all available</p> <p>7 resources from ND and surrounding states have</p> <p>8 been exhausted, and, at this point, we are</p> <p>9 severely outnumbered; is all that accurate?</p> <p>10 A. Yes.</p> <p>11 Q. You mentioned in the last line, where it</p> <p>12 says, please consider providing manpower to</p> <p>13 assist. You then say, politics aside, lives</p> <p>14 are at stake. What do you mean by politics</p> <p>15 aside?</p> <p>16 A. It seemed to me at the time that a cop</p> <p>17 is a cop, and we all think the same way, and</p> <p>18 even if you are a newly appointed deputy</p> <p>19 marshal right out of the academy, all the way</p> <p>20 up to supervision to headquarters, right to</p> <p>21 the director, we all think the same way, and</p> <p>22 I think, and this is just my opinion, and I</p> <p>23 know I'm not supposed to give opinions, but</p> <p>24 what the hell, I'm gonna do it. He -- if the</p> <p>25 director was alone in making his decision</p>

124:23-
125:10
602;
701/
702
expert
test.

125:11-
25
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126:1-127:12
401-402; 602

<p>Page 126</p> <p>1 with the deputy director and the marshal</p> <p>2 involved on a conversation, I don't think</p> <p>3 there would have been hesitation whatsoever</p> <p>4 in me making a request and him providing me</p> <p>5 troops from wherever he had extra troops. He</p> <p>6 would have sent them from all over the</p> <p>7 country, if it was up to him. I don't think</p> <p>8 it was up to him. I think he got the</p> <p>9 direction from -- I don't know. Attorney</p> <p>10 general? I don't know where it came from.</p> <p>11 Somewhere up above him. He answered to the</p> <p>12 attorney general. Some somewhere up above.</p> <p>13 Just seemed to me to be political. That was</p> <p>14 the assumption of all the sheriffs. Granted,</p> <p>15 I was appointed by a Democratic president,</p> <p>16 most of the sheriffs in North Dakota were</p> <p>17 Republican, so I was somewhat swayed by their</p> <p>18 influence. But the experience of it told me</p> <p>19 that it was higher up than the marshal</p> <p>20 service. But nobody would tell me that.</p> <p>21 You have to understand, and it</p> <p>22 seems to me that you have to understand that</p> <p>23 the difficulty it is for somebody like me to</p> <p>24 turn another cop down, and on the level at</p> <p>25 which I had to turn them down wasn't just cop</p>	<p>Page 128</p> <p>1 BY MR. KERLIN:</p> <p>2 Q. Welcome back after a short break.</p> <p>3 May I continue?</p> <p>4 A. Yes.</p> <p>5 Q. All right. I want to talk to you a</p> <p>6 little bit about the relationship between the</p> <p>7 marshal service and the department of</p> <p>8 justice. Can you tell me how those interact</p> <p>9 or relate in the federal government.</p> <p>10 A. Marshal service is part of the</p> <p>11 department of justice. Like the FBI or DEA,</p> <p>12 we answer to the direction of the department</p> <p>13 of justice, the attorney general.</p> <p>14 Q. That was going to be my question.</p> <p>15 Ultimately, the attorney general for the</p> <p>16 United States is the head of the department</p> <p>17 of justice; correct?</p> <p>18 A. Ultimately, yes.</p> <p>19 Q. And, at the time, that was Attorney</p> <p>20 General Loretta Lynch; is that correct?</p> <p>21 During the protests in 2016?</p> <p>22 A. Yes.</p> <p>23 Q. Sorry. I didn't mean to talk over you.</p> <p>24 Within the US Marshal Service, is</p> <p>25 there any type of a rapid response team or</p>
<p>Page 127</p> <p>1 to cop. It was an abundance of cops to an</p> <p>2 abundance of cops. You take the abundance of</p> <p>3 the federal level resources that I should</p> <p>4 have been able to provide as the US Marshal,</p> <p>5 as being presidentially appointed, and I'm</p> <p>6 requested by local sheriffs to provide</p> <p>7 assistance on federal land on a federal</p> <p>8 issue, and I have to turn them down because</p> <p>9 nobody will back me from headquarters.</p> <p>10 That's one of the most -- not one of -- it's</p> <p>11 the most the disappointing thing I've ever</p> <p>12 done in 40 years of law enforcement.</p> <p>13 MR. KERLIN: We've been going</p> <p>14 approximately about an hour. It's probably a</p> <p>15 good point to take a brief break, and then I</p> <p>16 think I can probably be completed within --</p> <p>17 within less than an hour, so we can finish up</p> <p>18 today.</p> <p>19 THE VIDEOGRAPHER: We're going off</p> <p>20 the record. Universal coordinated time is</p> <p>21 1833. We're off the record.</p> <p>22 (Pause in proceedings)</p> <p>23 THE VIDEOGRAPHER: We are now back</p> <p>24 on the record. Universal coordinated time is</p> <p>25 1840.</p>	<p>Page 129</p> <p>1 emergency response team?</p> <p>2 A. Yes.</p> <p>3 Q. And is that one type of an asset that</p> <p>4 can be deployed with approval of the US</p> <p>5 Marshal Service if it's appropriate to do so</p> <p>6 and approved to do so?</p> <p>7 MR. SCARPATO: Objection, calls for</p> <p>8 a legal conclusion.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. KERLIN:</p> <p>12 Q. And what is that type of response team?</p> <p>13 Can you just provide a little bit of -- just</p> <p>14 explain kind of what that entails or what</p> <p>15 that would be if the request came in and was</p> <p>16 approved for that type of rapid response team</p> <p>17 or emergency response team.</p> <p>18 A. In essence, what you may know as the</p> <p>19 SWAT team type response, headquarters</p> <p>20 actually did provide a SOG team, special</p> <p>21 operations team to Bismarck. They stationed</p> <p>22 within the courthouse, but they were</p> <p>23 restricted to any attacks on the courthouse</p> <p>24 itself. They weren't here to respond, to</p> <p>25 assist local law enforcement at the protest</p>

128:5-129:2 401-402

129:3-10
401-402
; 701/702
calls for
legal
conclusion

129:12-131:1
401-402
2

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<p style="text-align: right;">Page 130</p> <p>1 site.</p> <p>2 Q. And I guess they weren't authorized to</p> <p>3 then go onto US Army Corps, in essence,</p> <p>4 federal land, and address issues that might</p> <p>5 arise on that area?</p> <p>6 A. No. They had to stay within the</p> <p>7 courthouse.</p> <p>8 Q. And just so I'm clear, the acronym for</p> <p>9 that is SOG? Is that what it's called?</p> <p>10 A. Yes.</p> <p>11 Q. And can you give us an idea of how large</p> <p>12 that type of team can be.</p> <p>13 A. The team that responded, I don't know</p> <p>14 how many guys there were. There were maybe</p> <p>15 ten. Nine guys plus all their equipment.</p> <p>16 But that's just one regional division of SOG.</p> <p>17 They had regional teams all over the country.</p> <p>18 There might have been one, I don't know where</p> <p>19 they came from, let's say it was Minneapolis.</p> <p>20 For instance, they were assigned to the</p> <p>21 Midwest. And there may be one, maybe, in</p> <p>22 Portland, Oregon, or that type of place.</p> <p>23 They handle the Upper Northwest, you know,</p> <p>24 for their own country. So their numbers</p> <p>25 could increase depending on the severity of</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Okay. And do you recall why that</p> <p>2 request was made?</p> <p>3 A. I don't recall the exact situation. I</p> <p>4 don't recall if there was intel that</p> <p>5 indicated that they needed that vehicle to --</p> <p>6 maybe as a rescue vehicle, get somebody out</p> <p>7 of the protest sites or that type of thing.</p> <p>8 I'm not sure what the reasonings were. I</p> <p>9 just don't recall what they were, but</p> <p>10 something like that would have been a</p> <p>11 legitimate reason.</p> <p>12 Q. Was that something that was -- was that</p> <p>13 a US Marshal vehicle that was -- that you</p> <p>14 allowed to be used?</p> <p>15 A. I think so, yes.</p> <p>16 Q. Again, you can't remember any of the</p> <p>17 particulars about to whom you let use that or</p> <p>18 for what specific reason or occasion or</p> <p>19 things of that nature?</p> <p>20 A. Well, like I said, I know one of the</p> <p>21 situations would have been if somebody needed</p> <p>22 to get out of that protest situation quickly,</p> <p>23 and they would have, you know, sent a bunch</p> <p>24 of law enforcement along with it to extract</p> <p>25 somebody. That's one. But I don't know.</p>
<p style="text-align: right;">Page 131</p> <p>1 the need.</p> <p>2 Q. So if the call went out, and they</p> <p>3 needed, for instance, more than one of these</p> <p>4 SOG teams, that's something that could be</p> <p>5 potentially mobilized to respond to whatever</p> <p>6 the need is or the call?</p> <p>7 A. Yes.</p> <p>8 MR. SCARPATO: Objection,</p> <p>9 foundation, calls for a legal conclusion.</p> <p>10 You can answer.</p> <p>11 BY MR. KERLIN:</p> <p>12 Q. And then also to have an understanding</p> <p>13 of -- what about other federal resources for</p> <p>14 law enforcement that would be available? Are</p> <p>15 you familiar with what the FBI would have</p> <p>16 that would be available if the call was made</p> <p>17 for FBI assistance?</p> <p>18 A. I don't know. You'd have to ask</p> <p>19 supervision in FBI. I don't know what they</p> <p>20 have.</p> <p>21 Q. At some point during the protest, was</p> <p>22 there ever a request made for an armored</p> <p>23 Suburban?</p> <p>24 A. I recall that we did make that request,</p> <p>25 yes.</p>	<p style="text-align: right;">Page 133</p> <p>1 There could be other reasons why they wanted</p> <p>2 it. I don't know what they used to justify</p> <p>3 the request.</p> <p>4 Q. Do you recall at some point in time,</p> <p>5 later into the fall and winter, if there was</p> <p>6 a need for a potential evacuation of some of</p> <p>7 the protestors on corps land?</p> <p>8 A. I don't recall that, no.</p> <p>9 Q. And do you recall -- okay. Fair enough.</p> <p>10 We'll leave it at that.</p> <p>11 I want to show you something and</p> <p>12 see if -- so it's Exhibit 343, but, actually,</p> <p>13 before we get there, let's -- before I --</p> <p>14 what was your last day before you retired,</p> <p>15 your last day as US Marshal?</p> <p>16 A. December 31st of 2016.</p> <p>17 Q. Any particular reason why you retired?</p> <p>18 A. 41 years.</p> <p>19 Q. Good reason. Were the protests still</p> <p>20 continuing with people camping and protestors</p> <p>21 camping on corps land when you left the</p> <p>22 marshal service?</p> <p>23 A. Yes. And my retirement plans were in</p> <p>24 place long before the protests initiated.</p> <p>25 Q. Did you have any further involvement</p>

131:2-7
401-402; 602;
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<p style="text-align: right;">Page 134</p> <p>1 with the protests or law enforcement response</p> <p>2 after December 31st, 2016?</p> <p>3 A. No.</p> <p>4 MR. KERLIN: Could we bring up</p> <p>5 Exhibit 343.</p> <p>6 (Exhibit 343 marked)</p> <p>7 BY MR. KERLIN:</p> <p>8 Q. This is an email that you're not on. It</p> <p>9 went to a lot of Corps of Engineers folks,</p> <p>10 and it's from James Startzell, Major</p> <p>11 Startzell, and at the bottom it says, all,</p> <p>12 please see DAPL daily update below, and it</p> <p>13 has attachment, LE federal letter final-3</p> <p>14 PDF. We'll show that to you in a minute.</p> <p>15 If we go to the next page, at the</p> <p>16 top there it says, number of protestors/law</p> <p>17 enforcement action, estimated counted in the</p> <p>18 camp -- camps is 1200-1400 people. No change</p> <p>19 to law enforcement situation. Law</p> <p>20 enforcement submitted the attached press</p> <p>21 release signed by LE from North Dakota,</p> <p>22 criticizing the federal government harshly</p> <p>23 for not aiding the state and local</p> <p>24 authorities and again calling for action.</p> <p>25 I want to go to the attachment,</p>	<p style="text-align: right;">Page 136</p> <p>1 BY MR. KERLIN:</p> <p>2 Q. So we'll just start with the first</p> <p>3 paragraph and the first sentence. It says,</p> <p>4 as the chief law enforcement officers tasked</p> <p>5 with managing the ongoing protest actions in</p> <p>6 North Dakota surrounding the completion of</p> <p>7 the Dakota Access Pipeline, we are writing to</p> <p>8 request that the federal government begin</p> <p>9 supporting North Dakota and North Dakota law</p> <p>10 enforcement with actions, not words.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you agree with what the various North</p> <p>14 Dakota law enforcement officers' statement</p> <p>15 that, as of December 9, 2016, that North</p> <p>16 Dakota hadn't been supported by the federal</p> <p>17 government with anything other than words?</p> <p>18 MR. SCARPATO: Objection, vague,</p> <p>19 foundation.</p> <p>20 THE WITNESS: I guess the only</p> <p>21 other thing I can think of other than words</p> <p>22 were use of those Suburbans as far as the</p> <p>23 Suburbans were discussed.</p> <p>24 BY MR. KERLIN:</p> <p>25 Q. Fair enough. Outside of that, nothing</p>
<p style="text-align: right;">Page 135</p> <p>1 which is, I believe, that document. I'm</p> <p>2 going to show you the whole document, and</p> <p>3 we'll go through it. It's a total of three</p> <p>4 pages, but this is the first page. It's on</p> <p>5 the letterhead of Morton County Sheriff</p> <p>6 Department, Kyle L. Kirchmeier Sheriff, and</p> <p>7 it's dated December 9th, 2016, directed to</p> <p>8 President Barack Obama.</p> <p>9 And if we go to the next page, it</p> <p>10 continues on, and then at the end I want to</p> <p>11 show you the signature pages, page with</p> <p>12 signatures, and it has a number of different</p> <p>13 law enforcement officers. Then it's CCed to</p> <p>14 Loretta Lynch, Attorney General; Sally Jewel,</p> <p>15 Secretary of the Interior; and Eric Fanning,</p> <p>16 Secretary of the Army.</p> <p>17 Mr. Ward, do you recall seeing this</p> <p>18 open letter that was sent to President Obama?</p> <p>19 A. I recall seeing it. Not before it was</p> <p>20 sent, I didn't know anything about it until</p> <p>21 it was sent.</p> <p>22 MR. KERLIN: I want to go to the</p> <p>23 first page, and I just want to go through a</p> <p>24 couple of parts of it, I'm sorry, of the --</p> <p>25 there we go.</p>	<p style="text-align: right;">Page 137</p> <p>1 else comes to mind as far as support; is that</p> <p>2 accurate?</p> <p>3 A. Yes.</p> <p>4 Q. The next paragraph, the November 25th</p> <p>5 letter sent by Colonel Henderson of the US</p> <p>6 Army Corps of Engineers to Standing Rock</p> <p>7 Sioux Tribal Chairman David Archambault,</p> <p>8 informing him of the closure of corps land to</p> <p>9 public use as of December 5th was an</p> <p>10 important and heartening step, but this past</p> <p>11 Sunday's ruling by the USACE against the</p> <p>12 pipeline's easement has done nothing to ease</p> <p>13 the tension or alleviate the potential for</p> <p>14 more violence.</p> <p>15 Did you become aware that in</p> <p>16 November, the end of November, that the corps</p> <p>17 had then closed the land to public use at</p> <p>18 some point?</p> <p>19 A. I don't recall that.</p> <p>20 Q. Okay. Next paragraph. We cannot</p> <p>21 express strongly enough our need for</p> <p>22 financial assistance and additional manpower</p> <p>23 in order to follow through on the demands</p> <p>24 made in the November 25th letter and respond</p> <p>25 to the increasingly dangerous situation</p>

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1 developing on federal land owned by the
2 corps. Specifically, the support of 100
3 border patrol agents and members of the US
4 Marshal Special Operations Group would allow
5 us to maintain effective control over this
6 situation.
7 Do you agree that if 100 border
8 patrol agents and members of the US Marshal
9 Special Operations Group were provided to
10 state law enforcement in North Dakota, that
11 that would have been helpful to maintain
12 effective control over the situation, as
13 stated in this?
14 MR. SCARPATO: Objection, misstates
15 the evidence and calls for speculation.
16 THE WITNESS: I believe it would
17 have been helpful. I don't know that it
18 would have been absolute resolution. Would
19 have needed more, for all I know, but it
20 would have been helpful.
21 BY MR. KERLIN:
22 Q. Let's skip the next paragraph, and in
23 the interest of time, we'll go to the next
24 one.
25 Throughout this process, law

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1 peacefully exercise their First Amendment
2 rights?
3 A. Yes.
4 Q. Do you also agree that, instead of
5 partnering with local -- North Dakota law
6 enforcement, the federal government had
7 treated North Dakota law enforcements as
8 through they were not to be trusted?
9 MR. SCARPATO: Objection, vague,
10 foundation.
11 THE WITNESS: I don't know if I can
12 agree with that. No, I don't necessarily
13 agree that the federal government didn't
14 trust us. I'm just saying they didn't
15 support them.
16 BY MR. KERLIN:
17 Q. The next paragraph. Go to the last
18 sentence. It says, however, every time
19 have asked the federal government for
20 assistance, they have instead responded with
21 resistance. Is that consistent with your
22 requests that you made for federal assistance
23 as a US Marshal?
24 MR. SCARPATO: Objection, vague.
25 THE WITNESS: Every time when

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if
objections
overruled,
106

140:17-141:
9 401-402

138:25-139:11 401-402

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1 enforcement has acted methodically, safely,
2 and with great restraint. Our only concern
3 is the safety of our state, its citizens, and
4 those who visit, including those who
5 peacefully exercise their First Amendment
6 rights. And, yet, instead of embracing us as
7 partners in an effort to defend the rule of
8 law, the federal government has treated us as
9 though we're not to be trusted.
10 Did I read that correctly?
11 A. Yes.
12 Q. Want to start with the first part of
13 that paragraph. Do you agree that,
14 throughout the process, North Dakota law
15 enforcement has acted methodically, safely,
16 and with great restraint?
17 MR. SCARPATO: Objection,
18 foundation.
19 THE WITNESS: Yes, I do.
20 BY MR. KERLIN:
21 Q. Do you agree that the law enforcement
22 for North Dakota that you interacted with as
23 US Marshal, that they expressed their concern
24 is the safety of their citizens, its state,
25 those who visit, and also those who

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1 referring to DAPL protests, certainly not any
2 other time under my direction. In other
3 words, if the sheriff called my office and
4 said he needed assistance in serving a
5 felonious warrant, an arrest warrant, we
6 would have -- we acted immediately to assist
7 him. But in the DAPL situation, I would say
8 that he was met by resistance, but certainly
9 not every time in any other situation.
10 MR. KERLIN: Go to the next
11 paragraph on the next page.
12 BY MR. KERLIN:
13 Q. Go to the -- it's actually the third
14 sentence, it starts, when protestors take
15 over the lobby of the William Guy federal
16 building in Bismarck, who is asked to
17 respond? Local law enforcement.
18 Is that consistent with your
19 recollection of when there was some protests
20 that had moved to the federal building in
21 Bismarck?
22 A. They weren't admitted into the building.
23 They didn't get into the lobby. Got up to
24 the outside of the doors. Yes, other than
25 that, that's my recollection.

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concl.

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1 Q. And local law enforcement, as you
2 mentioned earlier, Bismarck PD came and
3 assisted as much as they had the resources to
4 do so?
5 A. Yes.
6 MR. KERLIN: Next paragraph, I'm
7 sorry, the paragraph after that. We'll go
8 down to the third.
9 BY MR. KERLIN:
10 Q. On this letter they state, the federal
11 government's response to the events in our
12 community has been appalling, and it is
13 abundantly clear they have no interest in
14 helping the citizens of North Dakota.
15 Based on your experiences, is that
16 consistent with what happened?
17 MR. SCARPATO: Objection, vague.
18 THE WITNESS: I guess so, yes.
19 MR. KERLIN: Go to the
20 second-to-last paragraph.
21 BY MR. KERLIN:
22 Q. Despite our anger and frustration with
23 federal officials in Washington, DC, their
24 local representatives, specifically US
25 Attorney Chris Myers and US Marshal Paul

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1 Ward, have been tireless champions of our
2 cause. They understand the dynamics of what
3 is occurring within their community and have
4 repeatedly communicated this through their
5 chain of command, only to be met with
6 resistance and contempt for their concerns.
7 My question to you is, is what you
8 experienced when you asked for support
9 consistent with what was described in this
10 letter, this paragraph?
11 MR. SCARPATO: Objection, vague.
12 THE WITNESS: I don't know that I
13 would use the words as strongly as resistance
14 and contempt for their concerns. I don't
15 think our administration, including the
16 director, had any contempt whatsoever for my
17 concerns and my requests. It's just that
18 they couldn't abide by those requests. I
19 think he understood the need for the
20 requests. He just couldn't do it.
21 Basically, the words used written by the
22 sheriff are a little stronger than what I
23 would say.
24 BY MR. KERLIN:
25 Q. Thank you for that clarification.

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1 MR. KERLIN: We can take this
2 exhibit down.
3 BY MR. KERLIN:
4 Q. You mentioned earlier -- I think you
5 mentioned earlier in your deposition that at
6 some point you might have had a sit-down
7 meeting with Chairman Archambault?
8 A. Yes.
9 Q. Okay. Do you recall any particulars
10 about that conversation?
11 A. You know, it was a very small meeting.
12 It was Chris Myers, myself, maybe James
13 Thomas, Chairman Archambault. One thing I
14 recall about that specific meeting was
15 chairman looking me square in the eye and
16 telling me that whole thing was the marshal
17 service's fault, which took me aback to some
18 degree. He referred to back in the 1800s
19 when the marshal service came and kicked the
20 Native Americans off their land and put them
21 on the reservation, which was a bit of an
22 exaggeration, I think, or afar from what we
23 were trying to address at the time. And that
24 was the only thing that you asked me what
25 specifically in that meeting I recall, that's

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1 it.
2 Q. Okay. Unless you've indicated during
3 the course of this deposition that you didn't
4 understand my questions, have you understood
5 the questions that I've asked today?
6 A. Yes.
7 Q. Is there anything further that you would
8 like to add?
9 A. No.
10 Q. Have I been respectful and courteous to
11 you throughout this deposition today?
12 A. Yes.
13 Q. I wanted to express my -- I wanted to
14 express my personal appreciation for your
15 service over 40 years, both in the Air Force
16 as well as a law enforcement officer. Thank
17 you for that.
18 A. You're welcome. Thank you.
19 MR. KERLIN: At this time, I don't
20 have any further questions and would pass the
21 witness to counsel for the United States at
22 this time.
23 Mr. Scarpato, we can't hear you.
24
25

142:10-18
602; 611 vague

143:7-25 401-402

145:10-18 401-402

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April 20, 2022

ND OBJ:

As to 146:3-9,
147:15-149:7,
Relevance

<p style="text-align: right;">Page 146</p> <p>1 EXAMINATION</p> <p>2 BY MR. SCARPATO:</p> <p>3 Q. Mr. Ward, what I hope is only five or</p> <p>4 ten minutes of questions. Are you okay, or</p> <p>5 would you like to stretch your legs briefly</p> <p>6 before we -- before I do that?</p> <p>7 A. No. That's fine.</p> <p>8 Q. Okay. Great. So at any point you want</p> <p>9 a break, please just let me know.</p> <p>10 I'd like to ask about your</p> <p>11 discussion from earlier today about the</p> <p>12 director of the marshal service, and the</p> <p>13 person above the director would have been the</p> <p>14 attorney general with respect to decision</p> <p>15 making for whether and where to deploy</p> <p>16 marshal service resources.</p> <p>17 Do you recall that conversation</p> <p>18 from earlier today?</p> <p>19 A. Yes.</p> <p>20 Q. So was it your belief at the time that</p> <p>21 decision whether or where to deploy federal</p> <p>22 law enforcement assets was made by senior</p> <p>23 political leadership in the executive branch</p> <p>24 of the federal government?</p> <p>25 A. I'm sorry. I don't know if I understood</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Were you a part of any federal agency's</p> <p>2 chain of command other than the United States</p> <p>3 Marshal Service?</p> <p>4 A. No, I wasn't.</p> <p>5 Q. As the US Marshal, did you have any</p> <p>6 decision making authority over whether to</p> <p>7 grant or deny any permit for the use of corps</p> <p>8 property under that agency's regulations?</p> <p>9 A. No.</p> <p>10 Q. And as the US Marshal, did you have any</p> <p>11 decision making authority over any decision</p> <p>12 concerning the management of the land that</p> <p>13 sits under the Corps of Engineers authority?</p> <p>14 A. No.</p> <p>15 Q. Are you familiar with any of the</p> <p>16 regulations governing the management of Corps</p> <p>17 of Engineers land?</p> <p>18 A. No.</p> <p>19 Q. Are you familiar with Executive Order</p> <p>20 13007 concerning access to Native American</p> <p>21 sacred sites on federally managed lands?</p> <p>22 A. No.</p> <p>23 Q. Are you familiar with Executive Order</p> <p>24 13175 concerning consultation and</p> <p>25 coordination with federally recognized Indian</p>
<p style="text-align: right;">Page 147</p> <p>1 your question.</p> <p>2 Q. Sure. Was it your impression at the</p> <p>3 time, based on what you had learned from</p> <p>4 others in law enforcement and what you were</p> <p>5 hearing from DC, that the decision whether to</p> <p>6 deploy federal law enforcement assets was</p> <p>7 ultimately made by senior political</p> <p>8 leadership above the director of the marshal</p> <p>9 service in the executive branch?</p> <p>10 MR. KERLIN: Calls for speculation.</p> <p>11 THE WITNESS: That was my</p> <p>12 understanding at the time, yes, that it was</p> <p>13 out of his hands.</p> <p>14 BY MR. SCARPATO:</p> <p>15 Q. And Mr. Ward, as the United States</p> <p>16 Marshal for the District of North Dakota,</p> <p>17 were you an employee of the US Army Corps of</p> <p>18 Engineers?</p> <p>19 A. No.</p> <p>20 Q. Were you a part of the Corps of</p> <p>21 Engineers chain of command?</p> <p>22 A. No.</p> <p>23 Q. Were you a part of the FBI's chain of</p> <p>24 command?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 149</p> <p>1 tribes?</p> <p>2 A. No.</p> <p>3 Q. And do you know the details of where the</p> <p>4 boundaries of corps land are in the</p> <p>5 Cannonball River Valley as opposed to tribal</p> <p>6 land or federal land?</p> <p>7 A. No.</p> <p>8 Q. My last question is, you mentioned a few</p> <p>9 times today that you may not remember some</p> <p>10 things because of the passage of time. As</p> <p>11 compared to your memory today, would you say</p> <p>12 that the documents from the time are a more</p> <p>13 reliable source of information about the</p> <p>14 details of what happened during the time</p> <p>15 period?</p> <p>16 A. Yes, I would imagine the documents are</p> <p>17 more specific, specifically if I sent or</p> <p>18 received an email, and I don't recall</p> <p>19 receiving it. I would assume that the</p> <p>20 document is the more accurate depiction of</p> <p>21 from my recollection.</p> <p>22 MR. SCARPATO: Thank you. Those</p> <p>23 are my questions. I appreciate your time,</p> <p>24 Mr. Ward.</p> <p>25 MR. KERLIN: I don't have anything</p>

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<p>Page 150</p> <p>1 further.</p> <p>2 THE VIDEOGRAPHER: All right. This</p> <p>3 concludes the videotaped deposition. We're</p> <p>4 now going off the record. Universal</p> <p>5 coordinated time is 1912. We're off the</p> <p>6 record.</p> <p>7 (End of proceedings at 1:12 p.m.</p> <p>8 MDT)</p> <p>9 -o0o-</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p>Page 151</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I, Tracy E. Barksdale, Registered</p> <p>4 Professional Reporter, do hereby certify that</p> <p>5 there came before me via videoconference at</p> <p>6 the time and place hereinbefore indicated,</p> <p>7 the witness named on the caption sheet</p> <p>8 hereof, who was by me duly sworn to testify</p> <p>9 to the truth of said witness's knowledge,</p> <p>10 touching and concerning the matters in</p> <p>11 controversy in this cause; that the witness</p> <p>12 was thereupon examined under oath, the</p> <p>13 examination taken down by me in shorthand,</p> <p>14 and later reduced to printed form under my</p> <p>15 supervision and direction, and that the</p> <p>16 deposition is a true record of the testimony</p> <p>17 given and of all objections interposed.</p> <p>18</p> <p>19 I further certify that I am neither</p> <p>20 attorney or counsel for, or related to or</p> <p>21 employed by any of the parties to the action</p> <p>22 in which this deposition is taken, and</p> <p>23 further that I am not a relative or employee</p> <p>24 of any attorney or counsel employed by the</p> <p>25 parties hereto or financially interested in</p> <p>the action.</p> <p>Dated this 29th day of April 2022.</p> <p>-----</p> <p>TRACY E. BARKSDALE, RPR</p>	